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**JOINT COMMITTEE HEARING**

before

**SENATE STATE GOVERNMENT, FEDERAL AND  
INTERSTATE RELATIONS, AND VETERANS' AFFAIRS COMMITTEE**

and

**ASSEMBLY STATE GOVERNMENT, CIVIL SERVICE,  
ELECTIONS, PENSIONS, AND VETERANS' AFFAIRS COMMITTEE**

on

**SENATE BILL 544**

(Designated the "Minority Business Development Authority Act,"  
establishes a Minority Business Development Authority to  
provide financial and technical assistance to minority businesses)

Held:

April 27, 1984

Room 346

State House Annex

Trenton, New Jersey

**MEMBERS OF SENATE COMMITTEE PRESENT:**

Senator Wynona M. Lipman, Chairwoman

**MEMBERS OF ASSEMBLY COMMITTEE PRESENT:**

Assemblyman Joseph Charles, Jr., Chairman  
Assemblyman Richard A. Zimmer

**New Jersey State Library**

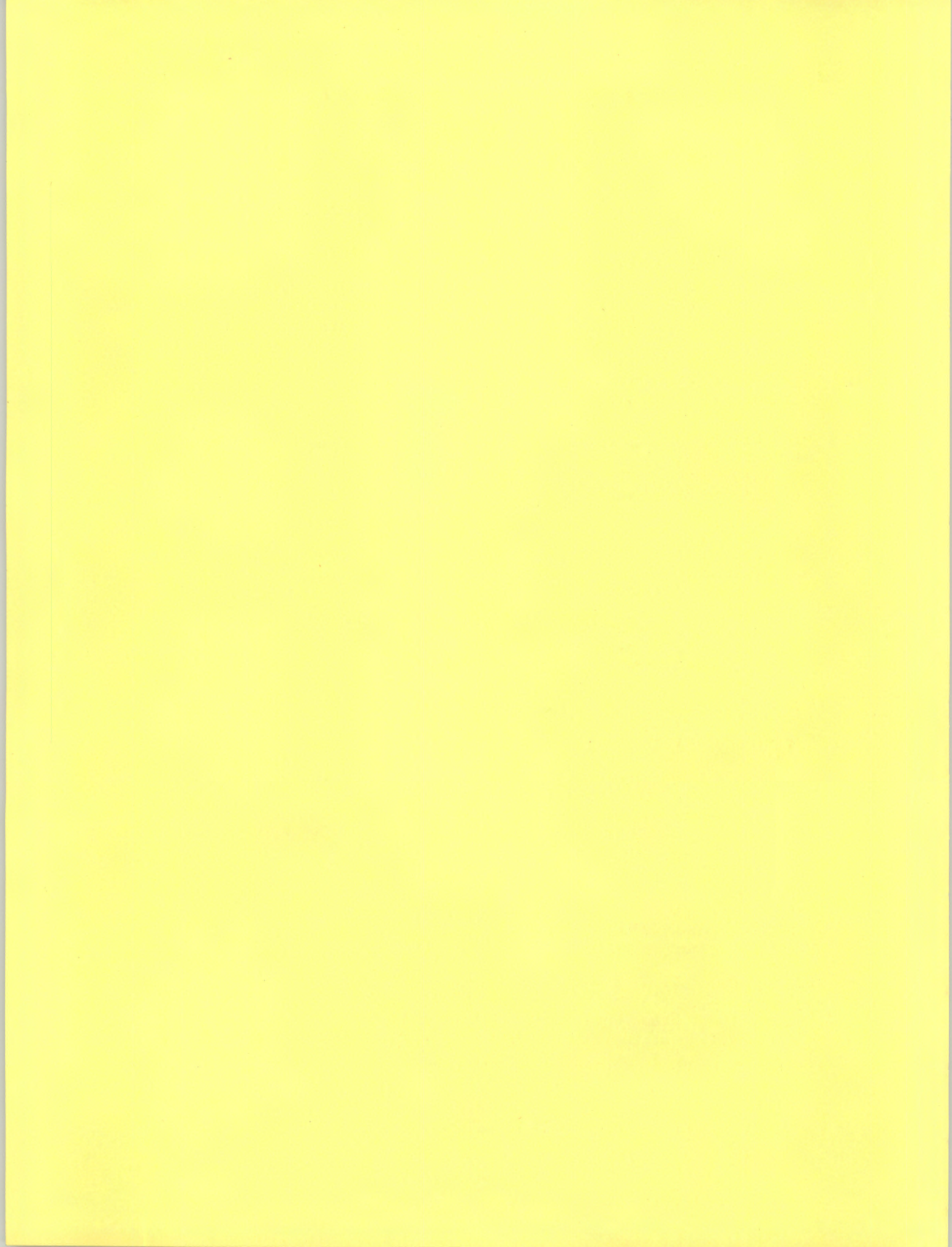
**ALSO PRESENT:**

Assemblyman Eugene H. Thompson  
District 29

Joseph P. Capalbo, Research Associate  
Office of Legislative Services  
Aide, Senate State Government, Federal and  
Interstate Relations, and Veterans' Affairs Committee

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SENATE, No. 544

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1984 SESSION

By Senator LIPMAN

AN Act establishing the New Jersey Minority Business Development Authority in the Department of Commerce and Economic Development and designating certain State purchases as minority business set-asides.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. This act shall be known and may be cited as the "New Jersey  
2 Minority Business Development Authority Act."

1 2. The Legislature finds and declares that:

2 a. The promotion of economic development is a legitimate and  
3 necessary governmental function.

4 b. Historically, businesses owned by minority group members  
5 and women have been small establishments offering products and  
6 services and their participation in the nation's business community  
7 has been disproportionate to their numbers in society as a whole.

8 c. The opportunity for full participation in our free enterprise  
9 system by minority group members and women is essential if  
10 social and economic justice for them is to be attained, and the  
11 functioning of our economy improved.

12 d. The presence of viable minority enterprises will provide  
13 incentives for youth as well as employment and business oppor-  
14 tunities, all of which will strengthen and preserve their faith in our  
15 country's political and economic institutions and the philosophy of  
16 freedom on which those institutions are based.

17 e. The existence of a strong and healthy free enterprise system  
18 is directly related to the well-being and competitive strength of



19 minority business enterprises and to the opportunity for minority  
20 business enterprises to have free entry into business, to grow and  
21 to expand.

22 f. The placing of a fair proportion of the State's total purchases  
23 and contracts for construction products and services with minority  
24 business enterprises is one way in which the State can ensure the  
25 development of those enterprises.

26 g. The establishment of a New Jersey Minority Business Develop-  
27 ment Authority will serve the public purposes of alleviating and  
28 overcoming the many barriers to business opportunity that have  
29 too long handicapped minority group members and women; insuring  
30 the participation of minority business enterprises in the State pro-  
31 curement process; and providing financial and technical assistance  
32 which will facilitate development of businesses by persons whose  
33 participation in the free enterprise system is hampered because of  
34 social, sexual or economic disadvantages, thereby promoting the  
35 health, safety, morals and general welfare of all the people of the  
36 State.

1 3. As used in this act:

2 a. "Authority" means the New Jersey Minority Business De-  
3 velopment Authority created pursuant to section 4 of this act.

4 b. "Commissioner" means the Commissioner of the Department  
5 of Commerce and Economic Development.

6 c. "Contracting agency" means the State or any department,  
7 board, commission, committee, authority or agency of the State.

8 d. "Department" means the Department of Commerce and  
9 Economic Development.

10 e. "Equity investment" means an investment of money in a  
11 minority business enterprise for which the investor expects to  
12 receive a return in money or other consideration or for which the  
13 investor receives an ownership interest in the enterprise.

14 f. "Minority business enterprise" or "enterprise" means a  
15 business at least 51% of which is owned by minority group members  
16 or women.

17 g. "Minority business enterprise loan" means a loan to a  
18 minority business enterprise made or guaranteed by the authority,  
19 pursuant to the provisions of this act.

20 h. "Minority group members" means residents of this State  
21 who are Black, Hispanic, Portuguese, Asian American, American  
22 Indian or Alaskan Natives.

23 i. "Minority business set-aside contract" means (1) a contract  
24 for goods, equipment, construction or services which is designated  
25 as a contract with respect to which bids are invited and accepted

26 only from minority business enterprises, (2) a portion of a contract  
27 when that portion has been so designated, or (3) any other purchase  
28 or procurement so designated.

1 4. a. There is established in the Department of Commerce and  
2 Economic Development a body corporate and politic, with corporate  
3 succession, to be known as the "New Jersey Minority Business  
4 Development Authority." The authority shall constitute a political  
5 subdivision of the State exercising public and essential govern-  
6 mental functions, and the exercise by the authority of the powers  
7 conferred by this act shall be deemed and held to be an essential  
8 governmental function. The authority shall be exempt from the  
9 provisions of Title 17 of the Revised Statutes.

10 b. The authority shall consist of 11 members, two of whom shall  
11 be the commissioner, who shall be chairperson, and the State  
12 Treasurer, who shall serve ex officio, or when so designated by  
13 them, their deputies or other representatives who shall serve at  
14 their pleasure, and nine public members to be appointed by the  
15 Governor, with the advice and consent of the Senate. Of the nine  
16 public members, four shall be minority group members who own or  
17 hold a controlling interest in a minority business enterprise in each  
18 of the following categories: (1) Building and construction; (2)  
19 Goods and services; (3) Transportation; and (4) Professional  
20 services, and three shall be women who own or hold controlling  
21 interest in a minority business enterprise. The public members  
22 shall serve for terms of four years, except that, of the nine public  
23 members first appointed, two shall serve for a term of one year,  
24 three shall serve for terms of two years, two shall serve for terms  
25 of three years and two shall serve for terms of four years. Each  
26 member shall hold office for the term of the appointment and until  
27 a successor shall have been appointed and qualified. A vacancy  
28 among the public members shall be filled by appointment for the  
29 unexpired term only.

30 c. A member of the authority appointed by the Governor may be  
31 removed from office by the Governor for cause after a public  
32 hearing.

33 d. The members of the authority shall serve without compensa-  
34 tion, but the authority may reimburse its members for necessary  
35 expenses incurred in the discharge of their official duties.

36 e. The authority, upon the first appointment of its members and  
37 thereafter on or after April 30 in each year, shall annually elect  
38 from among its members a vice chairperson who shall hold office  
39 until April 30 next ensuing and shall continue to serve during the



40 term of any successor to that appointment and until that successor  
41 shall have been appointed and qualified.

42 f. The powers of the authority shall be vested in the members  
43 thereof in office from time to time and a majority of the total  
44 authorized public membership of the authority shall constitute a  
45 quorum at its meetings. Action may be taken and motions and  
46 resolutions adopted by the authority by the affirmative vote of a  
47 majority of the public members present, unless the bylaws of the  
48 authority shall require a larger number. No vacancy in the member-  
49 ship of the authority shall impair the right of a quorum to exercise  
50 all the rights and perform all the duties of the authority.

51 g. Each member of the authority shall execute a bond to be  
52 conditioned upon the faithful performance of the duties of the  
53 member in a form and amount prescribed by the Attorney General.  
54 Bonds shall be filed in the office of the Secretary of State. At all  
55 times thereafter the members of the authority shall maintain those  
56 bonds in full force and effect. All costs of the bonds shall be borne  
57 by the authority.

1 5. The authority shall have the following powers:

2 a. To adopt, and amend at will, bylaws for the regulation of its  
3 affairs and the conduct of its business;

4 b. To adopt, and alter at will, an official seal;

5 c. To sue and be sued;

6 d. Pursuant to sections 7 through 16, inclusive, of this act, to  
7 administer a minority business enterprise set-aside program;

8 e. To provide technical assistance and business expertise to  
9 minority business enterprises and minority group members and  
10 women desirous of starting business enterprises;

11 f. To lend money to, and guarantee equity investments in  
12 minority business enterprises on terms and under conditions as it  
13 shall establish, pursuant to the provisions of this act.

14 g. To guarantee and insure loans made by a private financial  
15 institution which is subject to Title 17 of the Revised Statutes to  
16 minority business enterprises, pursuant to the provisions of this  
17 act;

18 h. By resolution, to incur indebtedness, borrow money and issue  
19 its bonds for the purposes stated in this act;

20 i. To apply for and accept grants and loans from the federal  
21 government or an agency thereof, or from any foundation, corpora-  
22 tion, association or individual, comply with the terms and condi-  
23 tions thereof, and assist a minority business enterprise in applying  
24 and qualifying for those grants and loans;

25 j. To make and enter into contracts or agreements with qualified

26 financial institutions subject to Title 17 of the Revised Statutes  
27 for the servicing and processing of loans made pursuant to this act;  
28 k. To appoint, retain and employ an executive director and addi-  
29 tional officers as the authority deems advisable, and appoint, retain  
30 and employ other employees, agents, or experts as may be necessary  
31 in its judgment, to fix their compensation, terms of office and dates,  
32 and to promote and discharge the officers, employees, and agents  
33 or experts, without regard to the provisions of Title 11 of the  
34 Revised Statutes;  
35 l. To invest money held and not required for immediate use or  
36 disbursement, at the discretion of the authority, in obligations  
37 authorized by law for the investment of trust funds in the custody  
38 of the State Treasurer.  
39 m. To call to its assistance and avail itself of the services of  
40 employees of any State department or agency as it may require  
41 and as may be available;  
42 n. To establish offices at locations throughout the State as the  
43 authority shall determine;  
44 o. To enter into agreements or contracts, execute instruments,  
45 and perform acts or things necessary, convenient, or desirable for  
46 the purposes of the authority or to carry out its powers;  
47 p. To adopt, amend, modify or rescind rules and regulations for  
48 the performance of its functions, pursuant to the "Administrative  
49 Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.);  
1 6. The authority, in order to aid and encourage the development  
2 of minority business enterprises, shall:  
3 a. Establish a loan referral program for minority business  
4 enterprises;  
5 b. Serve as liaison with the Department of the Treasury to  
6 promote the procurement of contracts for minority business enter-  
7 prises, pursuant to sections 7 through 16, inclusive, of this act;  
8 c. Monitor the regulatory activities of all State agencies perform-  
9 ing functions affecting the operation of minority business enter-  
10 prises in the State;  
11 d. Using available resources within the State, including, but not  
12 restricted to, institutions with graduate business programs, volun-  
13 teers from the private sector and minority business development  
14 offices, coordinate managerial and technical assistance in a syste-  
15 matic manner to minority business enterprises and minority group  
16 members and women desirous of starting business enterprises. In  
17 so doing, emphasis shall be placed on those aspects of operating a  
18 business which uniquely affect independent contractors, including,  
19 but not limited to: bonding, inventory control and establishing lines  
20 of credit;



21 e. Receive complaints of operators of minority business enter-  
22 prises and refer them to the appropriate federal, State and local  
23 agency for appropriate action on the complaints;

24 f. Study the operation of the laws affecting minority business  
25 enterprises and recommend to the commissioner new laws and the  
26 amendment of laws for the benefit of minority business enterprises;

27 g. Review pending legislation affecting minority business enter-  
28 prises and report its findings to the commissioner;

29 h. Provide a central resource for minority business enterprises  
30 in their dealings with federal, State and local governments;

31 i. Initiate and encourage minority business education programs;  
32 and

33 j. Submit to the Governor and the Legislature an annual report  
34 regarding its activities and setting forth recommendations of  
35 methods which might be utilized more efficiently and effectively to  
36 carry out the purposes of this act, and submit to the commissioner  
37 periodic reports on the condition of minority business enterprises  
38 in the State.

1 7. a. There is established the goal that contracting agencies set  
2 aside at least 15% of their total procurements for minority business  
3 enterprises owned by minority group members and at least 10% of  
4 their total procurements for minority business enterprises owned  
5 by women. For the purposes of this section, "total procurements"  
6 means all purchases, contracts or acquisitions of the contracting  
7 agency, whether by competitive bidding; single source contracting;  
8 or other method of procurement, as prescribed or permitted by law.

9 b. The goals established in subsection a. of this section may be  
10 attained by direct designation of prime contracts for minority  
11 business enterprises, or, in the case of a prime contract not directly  
12 designated for minority business enterprises, by requiring that a  
13 portion of a prime contract be subcontracted to a minority business  
14 enterprise.

15 c. Each contracting agency shall make a good faith effort to attain  
16 the goals established in this section. The goals established in sub-  
17 section a. shall be evaluated by comparing the dollar amount of  
18 each contracting agency's total procurement and the dollar amount  
19 of procurements the contracting agency has awarded to minority  
20 business enterprises owned by minority group members and women  
21 to the dollar amount of the State's total procurement and the dollar  
22 amount of State procurements awarded to minority business enter-  
23 prises owned by minority group members and women.

24 d. The goals established in subsection a. for minority group  
25 members and women are to be evaluated independently of each



26 other. In no event shall the goals be evaluated by considering  
27 participation of a minority business enterprise in both categories  
28 of enterprises owned by minority group members and enterprises  
29 owned by women.

1 8. The authority shall establish reasonable regulations appropriate for controlling the qualifications of prospective minority  
2 business enterprises according to the financial ability and experience of the enterprises and the capital and equipment available to  
3 them pursuant to and reasonably related to the class or category  
4 of work to be performed or materials and supplies to be furnished  
5 or hired in the performance of any contract, subcontract, or other  
6 procurement and may require each enterprise to furnish a statement thereof.

1 9. a. The authority shall develop and maintain a list of qualified  
2 minority business enterprises for the reference and use of contracting agencies. Enterprises included in the list shall be considered to meet the requirements and qualifications of this act, for  
3 participation in the State procurement process as a minority business enterprise.

4 b. Enterprises may request inclusion in this list in a manner and  
5 on forms as prescribed by the authority. Enterprises included in  
6 the list shall be designated as to the nature of the business of the  
7 enterprise and as being owned by minority group members or  
8 women, as the case may be, which designation shall be conclusive  
9 for the purposes of achieving the goals established in section 7  
10 of this act.

11 c. The authority shall review the list annually with each contracting agency to determine which businesses continue to qualify as  
12 minority business enterprises.

13 Enterprises may be removed from the list, or their designation  
14 as to ownership changed, by majority vote of the public members  
15 of the authority, consistent with the provisions of this act.

16 d. The department, pursuant to the "Administrative Procedure  
17 Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.), shall establish procedures for the review of the authority's decisions regarding designations and listings of qualified minority business enterprises,  
18 including a challenge by a third party of the authority's designation  
19 of a business as a qualified minority business enterprise.

20 10. a. Notwithstanding the provisions of any State bidding or  
21 public contracts laws to the contrary, contracting agencies, in consultation with the authority and the list maintained thereby, shall  
22 designate a contract, subcontract, or other procurement of goods,  
23 equipment, construction or services to be awarded by a contracting  
24 agency.



6 agency as a minority business set-aside contract, whenever it  
7 appears that bids can be obtained from at least three qualified  
8 minority business enterprises capable of furnishing the desired  
9 goods, equipment, construction or services at a fair and reasonable  
10 price. The designation shall be made prior to any advertisement  
11 for bids, where required.

12-13 b. Any advertisement for bids of a minority business set-aside  
14 contract bid shall indicate the invitation to bid as a minority busi-  
15 ness set-aside. The advertisement shall be in those newspapers as  
16 will best give notice thereof to minority business enterprise bidders  
17 and shall be sufficiently in advance of the purchase or contract to  
18 promote competitive bidding among them. The newspapers in  
19 which the advertisement shall appear shall be selected by the  
20 contracting agency in consultation with the authority. The adver-  
21 tisement shall designate the time and place at which sealed pro-  
22 posals shall be received and publicly opened and read, the amount  
23 of the cash or certified check, if any, which shall accompany each  
24 bid and other items as the office may deem proper. The advertise-  
25 ment shall be made pursuant to the procedure set forth in the law  
26 governing State contracts, where this act is inconsistent with that  
27 law.

1 11. a. When a contract, subcontract, or other procurement has  
2 been designated as a minority business enterprise set-aside con-  
3 tract, invitations for bids where required, shall be confined to  
4 minority business enterprises and bids from other bidders shall be  
5 rejected. The purchase, contract or expenditure of funds shall be  
6 awarded to the lowest responsible bidder among the enterprises,  
7 considering formality with specifications and terms, in accordance  
8 with regulations published by the authority. The award shall be  
9 made with reasonable promptness by the contracting agency with  
10 written notice to the authority.

11 b. If the contracting agency determines that the acceptance of  
12 the lowest responsible bid will result in the payment of an unrea-  
13 sonable price, the contracting agency shall reject all bids and  
14 withdraw the designation of minority business set-aside contracts.  
15 Minority business enterprises shall be notified in writing of the  
16 minority business set-aside cancellation, the reasons for the rejec-  
17 tion and the State's intent to resolicit bids on an unrestricted  
18 basis. The canceled solicitation shall not be counted as a set-aside  
19 for the purpose of attaining established set-aside goals.

1 12. a. If the authority and the contracting agency, after consulta-  
2 tion, cannot reach agreement as to the designation of a minority  
3 business set-aside contract, the contracting agency shall submit



4 the matter to the State Treasurer for final determination within  
5 seven days of the determination that an agreement cannot be  
6 reached.

7 b. If, after designation, it appears that bids from three qualified  
8 minority business enterprises cannot be obtained, the contracting  
9 agency may apply to the authority for a waiver and exemption  
10 from the provisions of this act. The authority shall, if satisfied that  
11 bids from the qualified minority business enterprises cannot be  
12 obtained, waive the designation of minority business set-aside  
13 contract and exempt that contract, subcontract or other procure-  
14 ment from the provisions of this act. The waiver and exemption, or  
15 denial thereof, shall be subject to review by the State Treasurer  
16 upon request by the contracting agency, an aggrieved enterprise, or  
17 other interested party.

1 13. Each contracting agency shall submit an annual report to the  
2 authority according to the schedule announced by the authority.  
3 This report shall include the following information:

4 a. The total dollar value and number of set-aside contracts  
5 awarded to minority business enterprises and the percentage of the  
6 total procurements, as defined in section 7, by the contracting  
7 agency that total dollar value and number of set-asides reflects;

8 b. The types and sizes of enterprises receiving set-aside awards  
9 and the nature of the purchases and contracts; and

10 c. The efforts made to publicize and promote the program.

11 The authority shall receive and analyze the reports submitted  
12 by the contracting agencies and, utilizing this data, submit an  
13 annual report to the commissioner and the Governor showing the  
14 progress being made toward the objectives and goals of this act  
15 during the preceding fiscal year.

1 14. A contracting agency which fails to meet the goals established  
2 in section 7 of this act and which is also unable to demonstrate to  
3 the authority that it has made a good faith effort to comply with  
4 those goals may be required by the authority to:

5 a. Cancel and resubmit a contract, subcontract or other procure-  
6 ment for bidding by qualified minority business enterprises pur-  
7 suant to sections 10 and 11 of this act; or

8 b. Designate a certain dollar amount of its future contracts,  
9 subcontracts or other procurements as contracts, subcontracts and  
10 procurements to which qualified minority business enterprises  
11 shall have an absolute first right.

1 15. A business which has qualified as a minority business enter-  
2 prise on the basis of incorrect information supplied by it and which  
3 has been awarded a contract to which it would not otherwise have  
4 been entitled under this act shall:



5 a. Pay to the State any difference between the contract amount  
6 and what the State's cost would have been if the contract had not  
7 been awarded in accordance with the provisions of this act;

8 b. In addition to the amount due under subsection a., be assessed  
9 a penalty in an amount of not more than 10% of the amount of the  
10 contract involved; and

11 c. Be ineligible to transact any business with the State for a  
12 period of not less than three months and not more than 24 months.

13 All payments to the State pursuant to subsection a. of this section  
14 shall be deposited in the fund out of which the contract involved  
15 was awarded. All payments to the State pursuant to subsection b.  
16 of this section shall be deposited in the General Fund.

1 16. The authority shall develop specific language to be included  
2 in all contracts negotiated after the effective date of this act, in  
3 which the parties acknowledge and agree to possible cancellation  
4 of the contract upon a determination by the authority pursuant to  
5 section 14 of this act, that a contracting agency has not made a good  
6 faith effort to achieve the goals established in section 7 of this act.

1 17. The department and authority shall consult regularly with  
2 representatives of minority business enterprises and business and  
3 industry as a whole for the purpose of implementing the provisions  
4 of this act. These consultations shall take place no less than once  
5 every six months.

1 18. The commissioner shall, pursuant to the provisions of the  
2 "Administrative Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1  
3 et seq.), promulgate the rules and regulations necessary to effectuate  
4 the purposes of this act.

1 19. This act shall take effect 120 days after enactment and shall  
2 expire on June 30, 1987.

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#### STATEMENT

This bill would establish the New Jersey Minority Business Development Authority in the Department of Commerce and Economic Development. The authority would be authorized to provide financial and technical assistance to minority businesses and administer the set-aside program established by the bill.

The program would require contracting agencies of the State, under certain conditions, to allocate a proportion of State contracts to minority business enterprises. Its language is designed to facilitate minority business set-aside contracts while at the same time maintaining State standards pursuant to P. L. 1954, c. 48 (C. 52:34-6 et seq.) for open competitive bidding which will give the State the best value for its expenditures.

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**SENATOR WYNONA M. LIPMAN (Chairwoman, Senate State Government, Federal and Interstate Relations, and Veterans' Affairs Committee):** Good morning. I am Senator Wynona Lipman. We will now start this public hearing. There are quite a few people here who wish to speak, so Assemblyman Joseph Charles is going to lay down the ground rules for you when he makes his comments.

We are here today to take testimony on Senate Bill 544. This bill establishes an 11-member Minority Business Development Authority in the Department of Commerce and Economic Development. The purpose of the Authority is to aid and encourage the development of minority business enterprises and women-owned businesses. A minority business enterprise is defined as a business which is at least 51% owned by minority group members -- Blacks, Hispanics, Asian-Americans, American Indians, or Alaskan Natives -- or women who are New Jersey residents. The Authority is exempted from the provisions of Title 17, the Corporations, Finance, and Insurance Act of the Revised Statutes.

The Authority is empowered to lend money, guarantee equity investments, issue bonds, provide technical assistance, establish a set-aside program, accept grants, invest money, and employ persons.

The Authority shall also monitor the regulatory activities of all State agencies performing functions affecting the operation of minority business enterprises in New Jersey. The Authority will review legislation affecting minority business enterprises, and will provide a central resource for minority businesses.

The bill provides that State agencies must set aside at least 15% of their total procurements for minority businesses owned by minority group members, and at least 10% of their total procurements for business enterprises owned by women. These percentages shall be calculated independently of each other. The Authority shall develop and maintain a list of qualified minority business enterprises for the reference and use of State contracting agencies. Notwithstanding the provisions of any State bidding or public contract laws to the contrary, a contracting agency shall designate a contract as a minority business set-aside contract whenever it appears that bids can be obtained from at least three qualified minority business enterprises.



I view this bill as an attempt to strengthen and build upon efforts already under way in the Department of Commerce and Economic Development to assist minority business development. The issue of minority business development is of concern to many people throughout the State, and today's hearing will, hopefully, lead to the passage of this very much needed legislation.

Now, I would like to introduce my colleague here, Assemblyman Joe Charles, who has a few remarks.

**ASSEMBLYMAN JOSEPH CHARLES, JR. (Chairman, Assembly State Government, Civil Service, Elections, Pensions, and Veterans' Affairs Committee):** Thank you, Wynona. I'm glad to see so many of you out this morning to participate in this public hearing. As you know, this bill has been introduced by Senator Lipman. We, on the Assembly side, consider it a very important piece of legislation too. I think the provisions in it will go a long way toward bringing minority and women-owned businesses into the mainstream of our economic life. I think everyone agrees that government must take some responsibility, and must make a commitment to further the development of minority and women-owned business enterprises. This legislation is consistent with, and fosters that purpose.

As you can see, we have a list of about 50 or so people who have indicated they wish to give testimony on this bill this morning. The group here consists of more than 50. I don't know if all of you intend to testify, but I will assume that most of you do. With a list of 50, and with the presence of so many of you here already, we are going to have to establish some fairly strict limits on how long each person is going to testify, if we are going to get out of here at a reasonable time. So, Senator Lipman and I would ask that you limit your remarks to between three and five minutes. If you can do that, it will be very, very helpful. Wynona gave me this assignment. She said that when it came to telling you what the restrictions were going to be, that that could be my job.

I should say, too, that one of the members of my Assembly Committee, Assemblyman Richard Zimmer, is here. He will be joining us shortly. He stepped out, but I think he will be back. So, the



gentleman who will be sitting to my left when he returns will be Assemblyman Richard Zimmer.

**SENATOR LIPMAN:** I would like to mention that Assemblyman Wayne Bryant has written a letter in support of this legislation, and I would like his letter added to the record. He could not be here today.

All right, let's begin. The New Jersey United Minority Business Brain Trust will be represented by two persons, Mr. Keith Bodden, who I believe is the Chairman, and Mr. Greg Wheeler, the Counsel.

**KEITH BODDEN:** Chairpersons Lipman and Charles, good morning. The New Jersey United Minority Business Brain Trust is most pleased to present testimony in support of the New Jersey Minority Business Development Authority, Senate Bill 544, sponsored by State Senator Wynona Lipman of Essex County. Since the started in 1981, our primary purpose has been to promote the maximum economic development of minority business enterprises in the State of New Jersey. Our membership represents 20% of New Jersey MBE's and a cumulative business ownership and management experience of 300 years. The New Jersey is chartered in New Jersey, and is a 501C6 nonprofit organization.

Senate Bill 544 is one of over 80 pending bills in the New Jersey Legislature directed to changing the chronic conditions of our urban communities. Senate Bill 544 is the cornerstone for emerging New Jersey State government urban redevelopment policies and programs. This bill recognizes the importance and potential for citizens of color to develop commerce and to take the lead in the economic emancipation of 20% of New Jersey's population.

The Brain Trust testimony in support of S-544 is in two parts: (1) Economic/social Justifications, presented by me, Keith Bodden, Chairperson-elect and President of KAIB Technologies in Randolph, New Jersey, and (2), Legal Justification, presented by Gregory Wheeler, the New Jersey Counsellor, a member of the New Jersey Bar, and a practicing attorney with a Philadelphia and New Jersey law firm.

First, the economic/social justification. The first Federal government minority business programs since the reconstruction period



were started in 1970 after the urban riots. The Kerner Commission Report revealed that in the area of government assistance to small business, there were truly two societies -- one Black and one White -- separate and unequal. The Kerner Commission recommended that the United States government encourage business ownership by minority citizens. Thus, the SBA 8(a) Program, enacted 12 years earlier in 1958 to ensure that a fair proportion of total government contracts were placed with small business concerns, was amended by the United States Congress in 1970 to implement noncompetitive government contract support to develop firms owned by minority persons.

These social conditions that started the United States government MBE programs over ten years ago are still present and are, obviously, more chronic in New Jersey today. A recent paper by the Director of the New Jersey Office of Economic Policy states these chronic conditions: "Between 1960 and 1980, the cities' populations declined by more than 15%, while the rest of the State gained more than 32%. Almost 50% of the cities' White population in 1960 had left the cities by 1980. The cities' labor forces declined by 18%, while the rest of the State gained more than 64%. Similar relationships are also found for total employment. The cities lost 39% of their manufacturing employment, while the rest of the State gained 6%. In the service sectors, the non-manufacturing sectors, the cities lost more than 10% of employment, while the increase in the rest of the State was 88%."

In 1980, the average income of a family in the cities of New Jersey was \$16,825, and in the rest of the State, almost double, nearly \$28,000. Twenty-six percent of New Jersey urban cities' populations were classified as having an income less than the poverty level, while only 6.3% of such populations were living in the rest of the State.

The housing stock in the cities declined by almost 6%, and increased by 20% in the rest of the State. These numbers refer to the period between 1970 and 1980. The crime rate was almost double in the cities, as compared to the rest of the State.

The paper concludes: "This result means that there is a big gap in the well-being and quality of life in New Jersey cities, compared to the rest of the State."



Exhibit A, a recent article in a New Jersey newspaper, gives dramatic evidence to this democratic inequality. It simply states that while New Jersey new businesses climb in the suburbs, as reported by the New Jersey Department of Commerce, in the cities, as reported by the Governor's Office of Policy and Planning, the prison population in New Jersey leads the rest of the nation. Obviously, we're talking about the fact that more than 50% of these inmates are Black, and are from New Jersey urban cities. There is no solution given here by New Jersey government, but, obviously, the lack of jobs and commerce in the urban cities is responsible for this high prison population.

Senate Bill 544 attacks these social ills by recognizing the potential for new and stable job development by those citizens who are committed to the revitalization of New Jersey urban commerce.

What is the minority business potential that S-544 recognizes? The New Jersey Brain Trust recognizes, like many other economic and governmental sources throughout the country, that the first American industrial revolution is over. Large corporations and small businesses in the 1950's, with cheap energy and suburban real estate, started the exodus from urban cities; they will never return to urban cities. International markets, expensive energy, and new technologies have dictated the commerce growth of the next American industrial revolution. Small business, i.e., minority business development, is the answer for urban commerce growth and jobs. The potential for New Jersey citizens of color to provide commerce growth exists today; however, like any other American commerce -- steel, auto -- government must take the lead and be the agent to protect and foster growth.

During the past three years, the New Jersey Brain Trust has developed data on the current New Jersey minority business status, briefly summarized as follows, and more thoroughly outlined in Exhibits B and C: Minority business enterprises are less than 5% of New Jersey's small businesses. This 5% represents approximately 16,000 small businesses. Two hundred and fifty to five hundred minority businesses account for approximately 5,000 jobs in New Jersey urban



cities. We can say that these MBE's are the result of the urban riots of the 1960's -- not the result of government planning. These MBE's are in businesses that will provide 95% of all future jobs, according to projections by the Federal government. These 250 MBE's exist in a "Black arrowhead corridor" from Paterson, to Camden, to Atlantic City.

I would just like to discuss Exhibit C on Page 10 briefly with the Committee. What we see (witness holds up Exhibit C) is a breakdown of current minority businesses. We see that approximately 47% are service businesses. This would be the maintenance businesses, and let's not underrate the maintenance business. Maintenance is one of the dramatic industries in New Jersey that minority businesses can conquer, where they can employ the urban population. The remaining percentages are broken down as follows: 16% construction, 15% technical, 11% manufacturing, and 11% supplies, or consumer goods. Let's keep that in mind, because further on in the testimony you will see that the 11% supplies or consumer goods is really the reason why the urban cities are on the brink of bankruptcy. Looking at these 250 to 500 minority businesses, they share approximately \$118 million in contracts -- mostly government contracts. This is commonly called the "crab market." These minority businesses share approximately-- The average income for these minority businesses is \$250,000 to \$20 million. Approximately two or three companies are in the \$2 million to \$3 million range, but we can safely say that the average income for minority businesses in urban cities is around \$50,000. I might add that probably the two most famous minority businesses in New Jersey are over \$50 million -- Famous Amos Cookies and Goya Foods.

Based upon Federal government studies, the current New Jersey minority business picture represents less than 25% of the potential for MBE commerce in New Jersey urban cities. The Federal studies indicate that nationwide, there are 14 minority-owned businesses for each 1,000 minority persons, compared to 63 businesses for each 1,000 non-minority persons. Senate Bill 544 would provide a legislative mandate, for the first time in the history of New Jersey, for New Jersey government and New Jersey citizens to have public, reliable data to evaluate the impact of MBE's on urban commercial growth.



What is this urban market potential? Based upon New Jersey minority business studies, it is concluded that the current urban market in New Jersey impacting on minority business -- as I said previously -- is \$118 million. The market summary includes New Jersey Black consumer spending potential. Please note it is estimated that only 10% -- \$26 million -- of Black consumer dollars are recycled in urban cities. The other 90% -- \$200 million -- obviously goes to the suburbs. This is the economic gridlock, the "Catch-22" of New Jersey urban cities. Before consumer dollars can be increased, businesses with services must be present. Before businesses can increase, capital and product services must be obtained. The private-sector financial sources are not going to invest in urban businesses. The minority business experiences during the past decade have demonstrated this. Only one solution remains -- a consistency in private and public-sector urban procurement programs to stimulate growth in established businesses, and the start of new businesses. This, in turn, will create new sources of capital from business profits.

This catalytic source is the established \$5.4 billion that is present right now in Federal, State, county, and city governments' annual services/product procurement in New Jersey. We estimate that 98% is going outside of New Jersey urban cities, or to the suburbs. Only an efficiently-coordinated State program can redirect these contract dollars to urban cities, start the increased urban consumer recycling of dollars, and normalize the urban economy. Senate Bill 544 would establish the office that would provide research and administrative services to be accountable for these procurement programs.

This testimony is not to lessen the importance of the current minority businesses' initiatives of the State government's Executive and Legislative Branches. Within the past six months, two Executive Orders have established a Governor's MBE Advisory Council and an Inter-agency Purchasing Committee. With Federal funds, an Office of Minority Business Enterprise has been established in the New Jersey Department of Commerce and Economic Development. These initiatives are significant in recognizing the potential for minority business in the



State's economic growth, and the commitment of New Jersey government to minority business growth.

Also, this testimony is not to lessen the importance of all the various direct or indirect services of State government impacting on minority businesses as outlined in the New Jersey Department of Commerce and Economic Development's comments on Senate Bill 544 (Exhibit E).

What the Executive Orders and Exhibit E demonstrate is that a consolidation of minority business State services is needed in order to maximize urban economic results at a minimum cost to New Jersey taxpayers. Senate Bill 544 would accomplish this.

Another important State MBE effort is the elimination of false minority business companies, commonly called "fronts," from all government procurement programs. The Brain Trust estimates that currently over 50% of Federal minority business subcontracting is awarded to fronts. This occurs because of the many different State agencies and private-sector organizations involved in the certification process. The Brain Trust study indicates that legitimate minority businesses spend an average of \$5,000 annually to be certified by over 16 different State and regional organizations. That study is included in Exhibit F. The fronts usually by-pass these certifications because of programs like the New Jersey Department of Environmental Protection's self-certifying process. The Public Advocate is currently finalizing a study on certification, and a bill is pending in the Assembly that would make minority business fronts a criminal offense. This bill is A-866, sponsored by Assemblyman Bryant and the Assembly Black Caucus. Senate Bill 544 will ensure the efficient implementation of these anti-front measures.

In summary, S-544 will consolidate the current State minority business program and will create more efficient mechanisms to increase the current minority business market from \$118 million to \$1.2 billion -- that is 20% of what it is right now -- with the potential of employing 48,000 new stable employees. Keep in mind that current urban unemployment is 52,000. What we are suggesting, is that these 52,000 persons being employed is within reach during the next decade, if we



can get a consistent government program going to ensure procurement opportunities. Senate Bill 544 should be viewed as a historic bill which strengthens the democratic process and the free enterprise system. The New Jersey Brain Trust urges quick passage, so that the New Jersey Minority Business Development Authority can begin the work of urban commerce redevelopment. Thank you.

Now, the second part of the report: The Legal Justification.

**GREGORY H. WHEELER:** Senator Lipman, Assemblyman Charles, and other distinguished members of the Senate and Assembly State Government Committees: My name is Gregory H. Wheeler. I am an attorney licensed to practice in both New Jersey and Pennsylvania. I am associated with the law firms of Reiners and Davis in Haddonfield, New Jersey, and Montgomery, McCracken, Walter & Rhoads in Philadelphia. I have been integrally involved in the development of minority business legislation and procurement programs in the City of Philadelphia, Commonwealth of Pennsylvania, and in the State of New Jersey. I have consulted on the establishment of similar programs for the City of Newark, New Jersey, the City of Detroit, Michigan, and the School District of Philadelphia.

I am speaking today in my capacity as legal counsel to, and member of the New Jersey United Minority Business Brain Trust. My comments will be limited to two areas concerning Senate Bill 544, including the legal validity of the bill, and suggested amendments to the bill.

This analysis is important for your consideration when ultimately passing the bill, because in almost every previous instance where similar legislation has been passed, whether at the Federal, State, or local level, it has been legally challenged by majority business interests.

Specifically, the provision of the bill which will most likely be attacked is the 15% and 10% procurement goals established for minority and women-owned businesses, respectively. There are two legal issues most often raised by opponents of minority procurement goals programs. First, it is most often asserted that such programs are in violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution. Specifically, the assertion is that



any legislation which establishes race or sex as a criteria in the awarding of a public benefit, denies equal protection of the laws to those people not possessing the particular racial or sexual characteristics. The most widely asserted argument against legislation involving State and local procurement for minorities and women is that in almost every jurisdiction in the United States, there is either a constitutional or statutory mandate requiring that contracts be awarded to the lowest responsible bidder. In the State of New Jersey, it is provided by statute that the Division of Purchase and Property, Department of the Treasury, must award contracts to the lowest responsible bidder. This is provided in New Jersey Statute, Section 52:27(b)-61.

Before analyzing these legal concerns, however, it is important to give an overview of Senate Bill 544. The bill originated as Senate Bill 3655, having been introduced on September 15, 1983, by Senator Wynona Lipman. The bill was pre-filed for reintroduction in the 1984 session. The bill states its purposes to include the promotion of economic development, to create full opportunity for minorities and women to participate in our free enterprise system, the attainment of previously-denied social and economic justice, the provision of employment and business opportunities for minorities and women, and the placement of a fair proportion of the State's total purchases with minority business enterprises.

Specifically, the bill establishes the New Jersey Minority Business Development Authority, and invests the Authority with the following powers and responsibilities: To provide technical assistance to MBE's; to lend money and guarantee equity of investments; to guarantee and insure loans; to encourage indebtedness and issue bonds; to monitor all State entities performing functions affecting MBE's; to serve as a central resource for MBE's; and, to administer, monitor, and enforce a 15% and 10% MBE State procurement program for minorities and women. As mentioned in the responsibilities of the Authority, the bill also establishes the goals of 15% and 10% for minorities and women.

Finally, the bill establishes penalties for failure to meet the above-cited goals without making a good-faith effort. The bill



also provides for penalization of any corporation falsely representing itself as a minority or woman-owned business.

This bill clearly meets the Fourteenth Amendment equal-protection standards established in the landmark decision of Fullilove versus Klutznick, The Secretary of Commerce, 448 U.S. 448 (1980). The Fullilove decision established a bench-mark test to determine whether a legislatively-created remedy to cure past discrimination in the area of contracting violates the equal-protection clause.

First, the United States Supreme Court relied heavily, in upholding the questioned legislation, on the fact that the legislative body established an ample record to conclude that the traditional practices, when applied to MBE's, perpetuated the effects of past discrimination. In the present situation, we are establishing a more than adequate record with the testimony that will be presented today. In addition, the Governor of New Jersey, in signing Executive Order 47 on September 16, 1983 creating a Governor's Advisory Council on Minority Business Development, specifically recognized that: "The ability of members of the minority community to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities."

Secondly, the Fullilove court established that the use of racial and ethnic criteria is a valid means of remedying the present effects of prior discrimination. An important factor that the Fullilove court cited for upholding the validity of the law questioned therein, was that the law was narrowly tailored to address its remedial purposes. The bill is limited to 15% of State procurement for minority-owned businesses, and 10% for women-owned businesses. More importantly, the bill attempts to address other problems affecting MBE's, such as financing, technical assistance, etc. Thus, the bill is a comprehensive approach to solving the present effects of prior discrimination on MBE's. Therefore, the bill does not unnecessarily disturb the rights of majority business persons.

Lastly, the Fullilove court found it extremely important that waiver provisions be provided in the law therein reviewed, thus



removing any possible onerous consequences of the law on government operations or majority-owned businesses. The present bill provides for exemption and waiver by departments and majority contractors when MBE's cannot be found in a particular contract area. This is provided in Section 12b. of the bill. The Fullilove court also thought it was important, but not crucial, that there be a durational limitation in the bill. The bill, as presently written, does contain a durational limitation, although it is probably unduly limited.

In my view, considering the provisions presently provided in the bill in the context of these public hearings, the bill will withstand any constitutional equal-protection challenge. It is now unquestioned that a state Legislature is a competent body to identify past discrimination and address same. The only question remaining after the Fullilove decision was, what governmental entities were competent to identify past discriminatory practices and institute procedures to remedy that discrimination? This uncertainty was present because, in the University of California versus Bakke, the famous reverse discrimination case, the court held that a university Board of Regents was incompetent to identify past discriminatory practices. However, the Fullilove court found that the United States Congress was a competent body. The question remaining was, were there any governmental bodies in-between the United States Congress and a university board which could be considered competent to make such a determination?

I could present a string of citations illustrating decisions going in either direction; however, in the interest of brevity, I will cite for you the only decision directly parallel to your situation as State legislators: the Ohio Contractors' Association versus William Kepp. This decision was a decision from the highest court, since it was the United States Court of Appeals in the Sixth Circuit which determined this issue. The Kepp court, although recognizing the Fullilove decision's reliance on the unique role of the United States Congress, held that Fullilove did not stand for the proposition that Congress was the exclusive entity competent to identify past discrimination. Indeed, the Kepp court cited numerous cases where both



state and local entities have been upheld in their identification of past discrimination and their efforts to remedy the present effects of such discrimination. The Kepp court concluded that the Ohio General Assembly was a competent body to identify past discriminatory practices in which the state had participated, to the detriment of minority groups living within the state, and, thus, could enact a law concerning MBE's.

The Kepp court held that the lack of a durational limitation, cited as merely a factor in the Fullilove case, was not a fatal flaw in the Ohio law, since the General Assembly is necessarily alert to the wishes of the electorate in the state, and is fully capable of amending or rescinding laws at any time. In the bill at issue, the Authority itself is given the responsibility to review and recommend new legislation.

In conclusion, I would just cite that the New Jersey Supreme Court has upheld the competency of both the State Executive Branch and a municipal council and mayor, in identifying past discrimination and addressing such discrimination, in the case of United Building and Construction Trades Council of Camden County and Vicinity versus the Mayor and Council of the City of Camden, and the Department of the Treasury of the State of New Jersey.

The next line of attack on legislation of this type is, as I stated before, the statutory provisions requiring that contracts be awarded to the lowest responsible bidders. However, if the State Legislature has as its objective the stimulation of the economic development of the minority and women-owned business community, and remedying the past effects of prior discrimination, the bill would not violate this statutory requirement.

As stated earlier, New Jersey statutes provide for the lowest-bidder requirement to be exercised by the Division of Purchase and Property, Department of the Treasury, and that they award all contracts to the lowest responsible bidder. However, it has been widely acknowledged that the lowest-responsible-bidder requirement is not simply a mandate to award contracts to the lowest dollar bid, but involves an exercise in sound discretion and the weighing of many



factors. The exercise of this discretion is amply demonstrated in the same statutory provision by providing that the Division of Purchase and Property may reject all bids when exercising such discretion. The Legislature may also provide, and have input into what constitutes a responsible bid. Indeed, the State may statutorily mandate by specification what will constitute responsibility on a particular contract, or concerning contracts in general. I refer you to the case of Hillside Township, Union County versus Sternum, 136A, Section 265.

Thus, if the State puts all of its interested parties on notice that the provision of a fair portion of State procurement dollars to minorities is a consideration when determining the responsibility of bidders, it is a completely valid factor to take into account. After all, the State which enacted the lowest-responsible-bidder requirement is fully capable of determining what factors should be considered when deciding responsibility.

In Sections 13b. and 11a., the bill specifically provides that in both advertising and in the issuing of invitations to bid, minority and female-participation goals will be made known to all interested parties.

Lastly, to strengthen the bill and make it even more resistant to legal challenge, I suggest the following amendments: Specifically, the definition of MBE should be amended to require that minorities and women managerially and technically control their companies, as well as own 51% of them; a specific \$500,000 appropriation should be added to set up the Authority, to be repaid in five years; and, specific funding mechanisms for the Authority's activities should be added. Forty percent of all recaptured UDAG investment dollars should be committed to the Authority; 10% of the Economic Development Authority's bonding capacity should be designated for Authority activities; a percentage of yearly revenues of the Port Authority of New York and New Jersey should be devoted to the Authority; Section 7a. should be amended to make clear that the 15% and 10% goals apply to total State procurement dollars, and not to the number of contracts involved; Section 8 should be modified to give the Authority statewide certification responsibility when certifying bona



fide minority and women-owned businesses; and, Section 12b. should be amended, because the requirement that there be three qualified minority-owned companies bidding for any set-aside bid is an unduly onerous requirement. In normal bidding processes, even if there is one bidder on a contract, there is nothing to prevent the awarding of the contract as long as it is responsible. Lastly, since the Kepp court decided that a durational limitation was not necessary to uphold the validity of legislation such as this, the June 30, 1987 limitation on the bill should be eliminated.

In conclusion, I have presented a short legal analysis outlining the issues which must be addressed to ensure that the bill is immune to legal challenge. Rather than present a long list of citations, I have presented the controlling case law which applies directly to the situation at hand, to illustrate that clearly the bill will be legal when passed, and to illustrate matters you should be aware of to ensure its legality. It should be noted that both this bill and the package of bills introduced by Senator Gormley and Assemblyman Bryant, which relate directly to minorities and women in South Jersey, Atlantic County and Atlantic City, are necessary. These bills should not be considered to be alternatives nor mutually-exclusive, as they address different concerns and are attached to different resources. Thank you.

SENATOR LIPMAN: Thank you very much, Mr. Wheeler and Mr. Bodden. First of all, I would like to tell Mr. Bodden that we appreciate the efforts the New Jersey United Minority Business Brain Trust is making on behalf of minority businesses. And, thank you very much for that very comprehensive statement, with the up-to-date statistics. Such statistics are usually very hard to get. Mr. Wheeler, are you going to give us a copy of your statement for the young lady over there?

MR. WHEELER: Yes; something will be delivered shortly.

SENATOR LIPMAN: We would especially appreciate a copy of the amendments you have suggested. Assemblyman Charles?

ASSEMBLYMAN CHARLES: Yes. I would also like to thank the speakers for their detailed and very informative presentation. As a



lawyer, I was particularly interested in the testimony given by the attorney, Mr. Wheeler, with reference to the constitutionality and legality of this particular piece of legislation. I think I agree with you that there should be no legal impediment to this legislation. If challenged, it should be upheld.

I mentioned earlier that one of my Committee members would be joining me. He was here on time; he just took a stroll. That is Assemblyman Richard Zimmer, who is one of the very active members of my Committee. He keeps our Committee discussions very lively. At this time, I would like to introduce Assemblyman Richard Zimmer. Also with us is Greg Edwards, who is the Committee Aide to the State Government Committee in the Assembly from the Minority Office.

SENATOR LIPMAN: And I would like to introduce Joe Capalbo, who is the Committee Aide to the Senate State Government Committee. Over here is Al Harris, who is the Executive Director of the Black Caucus in the Legislature. The gentleman over there who does not wish to be introduced is from the Star-Ledger.

ASSEMBLYMAN CHARLES: I would like to say one other thing. I noticed right away that my admonition about a time limit of three to five minutes for each speaker went unheeded by the very first speakers. That was blatantly abused, wasn't it? Nonetheless, we do appreciate your comments.

MR. BODDEN: Thank you.

SENATOR LIPMAN: Thank you for your efforts on behalf of Senate Bill 544. Thank you very much.

The next person who would like to present testimony is Mr. David Robinson, who is from Congressman Parren J. Mitchell's office.

**DAVID ROBINSON:** Good morning. I bring warmest greetings from The Honorable Parren J. Mitchell, who is in Washington. Senator Lipman, Assemblyman Charles, members of the Committee, ladies and gentlemen: The last thing Congressman Mitchell would want to be accused of is blatant abuse of your time schedule; therefore, I will attempt to be as brief as possible with this statement.

Congressman Parren J. Mitchell, as you may or may not know, is a member of the United States House of Representatives from the



Seventh Congressional District of Maryland, and is Chairman of the House Committee on Small Business.

He has been in Congress for 13 years. During this period of time, he has advocated economic equality and economic parity for minority business development at the Federal level. I am presenting his testimony today. My name is David Robinson; I am a counsel with the House Committee on Small Business. I have served in this capacity for two years, and have developed an expertise in set-aside legislation for minority business enterprises.

There has been some success on the part of Congressman Mitchell's efforts to increase economic parity for minority business enterprises. Of course, he will continue to struggle at the Federal level, but he is also of the strong belief that State and local governments must assume an equal responsibility for minority business development. It is for this reason that the Congressman is extremely pleased to contribute testimony today in support of Senate Bill 544. The Congressman regrets that he cannot personally present this testimony because of previous commitments.

The testimony I will present today will not address the technicalities of Senate Bill 544. However, I would like to discuss the physiological justification and economic need for the full and immediate enactment of this bill.

Some may argue that quotas are unconstitutional. The bill before you today does not set quotas. It does, however, establish goals. The United States Supreme Court, in the 1980 case of Fullilove versus Klutznick, handed down a landmark decision. The Justices held that Congress could mandate that a percentage of local public works' contract dollars be set aside for minority businesses. This case resulted from an amendment Congressman Mitchell introduced in 1977 to the Local Public Works Act, requiring the Economic Development Administration to set aside 10%, or more, of its local public works' contracts for minority business. This case, I believe, will provide you with legal support for Senate Bill 544. Thus, the issue before you today should not be a legal issue, but one of policy.



In view of the above, let me present some brief background information on small and minority business procurement legislation at the Federal level. It has been our nation's small business policy that personal and political liberties flourish only in a free enterprise political system, one based upon strong economic preferences. Congress recognizes the role of small business in preserving individual freedom, free competition, economic well-being, and the security of our nation. In giving expression to this policy in the 1953 Small Business Act, the Congress made it clear that, "Such security and well-being cannot be realized unless the actual and potential capacity of small business is encouraged and developed."

The significance of small business in our economy is revealed by the statistics alone. There are approximately 14 million small business firms in the United States today. They comprise more than 80% of all business firms, account for more than 40% of all business activity, provide jobs for 50% of our private-sector work force, and furnish a livelihood for more than 60% of our population. Further, small businesses account for more than 73% of retail sales, 70% of wholesale sales, 82% of construction, 80% of service industries, and 34% of manufacturing value added.

The Small Business Act identifies and requires government procurement as a major area in which the Congress intends that government assist and protect the interests of small businesses. This policy not only requires the agencies of government to aid small business, but also to make certain that "a fair proportion" of government contracts for goods, services, and construction are "placed" with small and minority business concerns.

Section 15 of the Small Business Act was enacted by Public Law 85-536 in 1958. It was a revision of Section 214 of the Small Business Act of 1953. The Act provides that, in order to carry out the purposes of the Act, small business concerns shall receive any award, or contract, or any part thereof, which is determined by the United States Small Business Administration and the contracting procurement agency to be in the interest of: (1) maintaining or mobilizing the nation's full productive capacity; (2) war or national defense



programs; and, (3) assuring that a fair proportion of total government contracts for property and services is placed with small business concerns.

As military weapons become more complex and major weapons and high-dollar programs become more prevalent, small business finds it increasingly difficult to obtain a fair share of government procurement at the prime contract level. In 1961, the Congress, recognizing the increasing need for small business participation in defense procurement programs through subcontracting, enacted Public Law 87-305. This Act requires that prime contracts in excess of \$1 million, and subcontracts in excess of \$500,000, include a provision for prime and major subcontractors to conform to the Small Business Subcontracting Program. It also provides that small firms be considered fairly as subcontractors and suppliers under government contracts.

The Small Business Act of 1958 was amended by Public Law 95-507 in 1978, whereby the Small Business Administration was empowered to arrange for the performance of procurement contracts by negotiating with "socially and economically disadvantaged" small business concerns for "construction work, service, or the manufacture, supply, or assembly of such articles, equipment, supplies, materials, or parts thereof, or servicing of processing in connection therewith, or such management services as may be necessary to enable the Administration to perform such contracts."

For purposes of P.L. 95-507, the term "socially economically disadvantaged small business concern," means any small business concern: (1) which is at least 51% owned by one or more socially and economically disadvantaged individuals; and, (2) whose management and daily business operations are controlled by one or more of such individuals.

"Socially disadvantaged individuals" are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group, without regard to their individual qualities. Moreover, for purposes of the Act, "economically disadvantaged individuals" are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been



impaired due to diminished capital and credit opportunities, as compared to others in the same business area who are not socially disadvantaged.

To highlight the vital importance of the Small Business Administration's Set-aside Program, and the 8(A) Program in particular, let me cite a few statistics. In Fiscal Year 1982, minority business received \$4.4 billion in Federal prime contracts and subcontracts. Of this amount, \$1.9 billion, or nearly 43%, was awarded through the 8(A) Business Development Program. For the Small Business Set-aside Program in Fiscal Year 1983, 51.4% of all DOD prime contract awards to small business took place under the Small Business Set-aside Program. Clearly, therefore, the small and minority business community is highly dependent upon an affirmative action-oriented procurement program.

In conclusion, it appears that the above Federal legislation is intended to preclude the undesirable concentration of government contracts and subcontracts in the hands of large companies, and to ensure that a fair proportion will be placed with small and minority businesses. It further appears that SBA was created to carry out the declared congressional policy to aid and protect the interests of small business concerns, to ensure the application of the fair-proportion policy in procurement, and to be the advocate of small business in securing and maintaining an effective competitive position in our American economic system of private enterprise.

The establishment of goals and the protection of fair participation in the awarding of government contracts underlining the above Federal contracting policies can be equally expressed, implemented, and complied with via State government legislation, such as Senate Bill 544. I can think of no reasons why a State governmental authority would not follow the path already paved by the Federal government in the area of small business and minority set-aside legislation and program implementation. Our free enterprise system can only remain free as long as the channels of opportunity for small and minority business growth remain open at all levels of government -- Federal, State, and local.



I commend you today for holding these hearings, and I hope that in your legislative wisdom you will find, as the Federal sector and other localities are finding, that it makes good business sense to expand contracting and financial opportunities for minority business owners. Through such a discovery, I am confident you will enact a strong and viable minority business set-aside bill.

I would like to thank you for this opportunity to speak before you, and I would like to formally submit Chairman Mitchell's statement for the record. If the members of the Committee have any questions, I will be more than happy to answer them, or return responses to them for the record. Thank you very much.

SENATOR LIPMAN: Thank you very much, Mr. Robinson. Assemblyman Charles, do you have any questions?

ASSEMBLYMAN CHARLES: I do not have any questions at this time, Mr. Robinson. Thank you very much for your testimony. Assemblyman Zimmer, do you have any questions?

ASSEMBLYMAN ZIMMER: No questions; thank you.

SENATOR LIPMAN: Mr. Robinson, thank you very much.

ASSEMBLYMAN CHARLES: Thank you, Mr. Robinson; we appreciate it.

SENATOR LIPMAN: We will now call upon Deputy Commissioner Henry Blekicki, from the New Jersey Department of Commerce and Economic Development.

HENRY BLEKICKI: Good morning, Senator, and members of the Joint Committee. I appreciate your allowing me to arrive midway through the hearing to present the Department of Commerce's thoughts on the proposed legislation. The reason why I was late was because, by accident, our Inter-agency Procurement Committee, which is one of the major elements of Governor Kean's initiative to work toward social and economic equality in State government with minority and women-owned businesses, held his quarterly meeting this morning, and I am the Chairman of that Committee.

I think Senate Bill 544 is a bill which certainly meets the needs and goals that the Governor has expressed on numerous occasions, including an occasion in September of last year, when he introduced and



signed Executive Orders 46 and 47. I think there is a consensus with you, Senator, that there is a need for greater social and economic equality for minority-owned and women-owned businesses.

I would like to relate to you what the current position is of the Administration's efforts in that direction. In April, 1982, shortly after the Department of Commerce was created, we began discussions with the Minority Business Development Agency of the United States Department of Commerce, with the hope that they would support our efforts to create an Office of Minority Business Enterprise within State government. Those hopes were realized on July 26, 1983, when we received a contract from the Minority Business Development Agency for \$150,000 to match the State's contribution, which was \$50,000, for a program which we thought was critical to the economic development efforts of this Administration.

The contract which was signed -- and, of course, we drafted the bulk of the contract; there were only minor amendments made by MBDA -- indicated that there were three or four major thrusts. The number one thrust of this Administration, as represented by that contract, was procurement. We felt that in the area of procurement, we had the ability, in a rather short period of time, to provide an equal opportunity for minority-owned businesses to participate more fully in the procurement opportunities which exist in State government. For example, in Fiscal Year 1983, New Jersey did somewhere in the neighborhood of \$630 million worth of business with vendors. So, we thought that if we could increase the opportunities and, therefore, the actual numbers and dollar values of contracts for MBE's -- and I should not exclude women-owned businesses, because we had a separate but parallel operation going at the same time within the Office of Small Business Assistance to do exactly the same thing -- that this would have a major impact on the business community and on the economy of New Jersey.

That office was staffed. It took us several months to qualify the people we needed to do the job. I think we have a very, very fine staff. Therefore, the operation has been in place for about nine months, starting with the signing of the contract. We did not



actually have anyone hired until about a month or a month and a half later, because we did not know exactly when the contract would be signed.

Now, the major effort on the part of OMBE is to increase procurement opportunities, as I have said. One of the critical things is to develop a registry of MBE's which are available to do business with the State. Currently, we have a list of approximately 4,000 companies -- MBE's -- which we are putting into the form of a registry. We think this is a major first step in the departments of State government determining where there are vendors who can provide specific services -- construction services, or products. In the interim, we will have, within one to two weeks, the Federal registry. It is brand-new; it is coming off the press right now. This registry will list 1,000 MBE's which the Federal agencies have certified as being true MBE's, and which are providing services to the various Federal agencies within the State of New Jersey.

At the meeting today of the Inter-agency Procurement Committee, I committed, along with Lee Davis, the Acting Chief of the Office of Minority Business Enterprise, to distribute that registry to each department of New Jersey State government. At the same time, we have also been working to revise procedures and practices within State government to make it more practical for MBE's, WBE's, and small business in general, to do business with the State of New Jersey. There are problems. In fact, we know of cases where small businesses have decided that they no longer want to do business with the State, because payment is so slow. That is a major problem. We all understand that; we recognize it, and we are making recommendations through the Inter-agency Procurement Committee to the Governor regarding that and a number of other new initiatives. Those recommendations have been distributed to the 20 departments of State government. They will be responding with their comments, and we will be getting the final draft of those recommendations to the Governor in a timely fashion.

Another element, besides procurement -- and that is certainly critical -- is financing. Financing is a major element of the Office



of Minority Business Enterprises' activities. We have a financial specialist who is responsible for providing direction and counsel, and for locating sources of financing for MBE's. We also have a specialist in the area of management and training. I think what you can see, Senator, and members of the Joint Committee, is that the Office of Minority Business Enterprise, through the contract we signed with the Minority Business Development Agency, is already undertaking many of the programs which are spelled out in Senate Bill 544. Therefore, all I can say is that we concur with, and support the thrust of your bill -- the general direction and intent of the bill. We think there is a need for this sort of activity to be undertaken. In fact, we think that this Administration, through Governor Kean's leadership, has, in fact, made a first major step.

Now, the first major step involved not only the Office of Minority Business Enterprise, but, also, some other groups, the Inter-agency Procurement Committee and the Governor's Advisory Council on Minority Business Development. Before leaving the Office of Minority Business Development, I might indicate to you that when we signed the first contract, it was always our intent, and it was understood mutually by MBDA, the United States Department of Commerce, and ourselves, that this would be an ongoing, continuing office. In fact, the contract that we proposed for this next year spells out in great detail, over the next three years, what the Federal government's contribution will be, with the understanding that the Department of Commerce will increase its support of that office as the Federal government decreases its support, until, in the fifth year of the program, the Department of Commerce will be fully supporting the office financially. So, it was always understood from the very beginning by the Federal government, as well as by ourselves, that this was a long-term program, that the Federal government was providing the initial seed capital, and that we were going to seek decreasing financial support from the Minority Business Development Agency and would make up the difference. That was always clearly understood. In fact, I had an opportunity to meet with Ralph Perez, the former Regional Director of MBDA, yesterday. He was involved in the initial



development of the contract, and his recollection is exactly what I have referred to here -- 100% the first year, 75% the second year, 50% the third year, 25% the fourth year, and 0% the fifth year, the 100% referring to the \$150,000, and then the Federal government reducing its contribution proportionately over the next four years.

So, I think we feel that this office is a permanent office, and that the Governor fully intended for that activity to be there to deal with a problem which has long existed, and which is pervasive within New Jersey and United States society.

Next, with regard to Executive Orders 46 and 47 -- on September 16, 1983, Governor Kean signed the Inter-agency Procurement Committee Executive Order. It created that Committee to provide, first of all, his authority, and his support, for a statewide coordinated effort to ensure that each department of State government provide increased opportunities for MBE's and WBE's, and also small businesses, to participate more fully in State procurement. In fact, the Executive Order says that at the end of each fiscal year, there must be a report by each department stating what goals they have established for themselves -- and this is a voluntary good-faith effort -- with regard to MBE procurement, WBE procurement, and small business procurement. In fact, within 90 days of the end of the fiscal year, I must report to the Governor the progress that each department has made, including changes in policies and procedures that will implement this initiative.

The Inter-agency Procurement Committee found, when it began its work, that there was no mechanism in place. No previous Administration had put into effect any mechanism to, first of all, define how much business we were doing with small businesses, with minority businesses, or with women-owned businesses, but, even more importantly, there was no direction; there was no initiative by any previous Administration to do a better job to increase the level of involvement with these various groups. We felt we had to develop a data base. We have gotten to the point where we are now distributing a questionnaire to the 13,000 approved vendors and the 3,000 pre-certified contractors to have them tell us whether they meet the



various criteria to be defined as "minority-owned, women-owned, or small business."

Now, let me define the terms, and I think they are consistent with your understanding, Senator. A business must be owned and operated on a daily basis -- owned 51% or more -- by either a minority or a group of minority citizens, or women, in order to be considered minority-owned or women-owned businesses. Furthermore, we have not yet defined "smallness." We know that the Federal government's definition of smallness is 500, but that may be too large a definition. We do not know what the State's involvement is with small business, but we know that within, let's say -- at the outside -- three months, we will not only have the data back, but also put into the Treasury Department's computer, so that we, for the first time, can define who are our minority and women-owned vendors, as well as small businesses in the State of New Jersey. We will be able, for the first time, to direct, or to inform MBE's and WBE's that contracts are coming along that they have the wherewithal to compete on. So, we will be in a position, for the first time, to inform the MBE's and WBE's that, in fact, there are good business opportunities for them in State procurement.

I think this is a major new step which has been taken by this Administration, specifically by the Inter-agency Procurement Committee. I must add, that Committee has a membership from all 20 departments. All 20 departments are participating, and are making solid contributions or recommendations on how to improve the system. We are working closely with Treasury and they are being very helpful in implementing systems that will allow us, for the first time, to ensure that MBE's, WBE's, and small business in general, are made aware of the fact that these contracts are available, and that we will go out and provide training through OMBE and through the Office of Small Business Assistance, to help them to effectively bid on State contracts.

You can see that so far there are two elements in the Administration's initiative. One is the Inter-agency Procurement Committee, which provides authority and coordination on a statewide basis. The second is a day-to-day effort on the part of OMBE to provide that sort of assistance and aid to the MBE community. I might



add that the Office of Small Business Assistance has the same mandate with regard to women-owned businesses, and they are completing that mandate under Betty Lyons' leadership. We all know the fine job that Betty has been doing.

The third part of the program is the Governor's Advisory Council on Minority Business Development. That was created through Executive Order 47. What the Governor wants is advice and counsel directly from the minority business community as to what this State should be doing to improve opportunities, to ensure equality of opportunity. We have a 33-member Board; 25 of those persons are representatives of minority businesses or minority groups, and seven represent various elements of State government. They are meeting on a bimonthly basis, and their major thrust initially -- and they set their own tenor and direction -- is procurement. They have distributed a questionnaire to all 20 departments of State government, to determine the precise nature of procurement practices and problems with regard to MBE's, and how things can be improved. So, you can see that procurement is certainly a major thrust, but not the only thrust.

I think for the first time during the last nine months, we have made major strides, in that within a short period of time, by the end of June, each department of State government will, under the Governor's mandate, Executive Order 46, be establishing goals for procurement for small, minority-owned, and women-owned businesses. In your bill, this is certainly a major element.

A second major element, of course, is to provide the necessary services, financial assistance, management assistance, advice, and so forth. I would like to point out that if you were to read our contract with the Minority Business Development Agency -- the Federal government -- you would see that the mandate which we initiated with the Federal government closely parallels what you are proposing in Senate Bill 544. So, we think we already have an appropriate office in place doing the work you are proposing be done.

Finally, in your bill you propose that in the Authority there be a major financing activity. I think that certainly deserves significant discussion. There is no doubt in anyone's mind that



capital formation is a critical problem for minority-owned businesses and women-owned businesses. We think that is an issue which has to be dealt with. We think, however, that the sources which are either presently available, or which will be with the Legislature's approval of an appropriation bill, will be available shortly in significant dollar amounts. What I am referring to, is that there are a number of programs which already provide significant financing, or which will, hopefully, provide significant financing within a very short period of time, with the Legislature's approval. For example, in the New Jersey Economic Development Authority, they have two programs besides the IDP -- the Industrial Development Program -- which are specifically available for all businesses in New Jersey, and certainly minority and women-owned businesses have taken advantage of it, and should take more advantage of it. The Loan Guarantee Program, currently available through the New Jersey EDA, has between \$35 million and \$40 million available today to be lent to businesses, and certainly small businesses, minority-owned businesses, and women-owned businesses can make better use of those funds. In addition, there is \$3 million to \$4 million of direct-loan money currently available for use by those categories of businesses. Now, it is available, I must point out, to all businesses, not just to minority or women-owned businesses. But, there is a significant pool of financing which has not been tapped satisfactorily by the business community in general, and specifically not by the MBE's and the WBE's of this State.

Over the life of the programs, there have been 139 projects funded through EDA. Sixteen percent of them have been funded to minority-owned enterprises through the Loan Guarantee Program. Over the existence of the Direct Loan Program, they have lent out \$23 million. A great majority of that money went to a few critical projects, such as the Oakenite project, to save hundreds, if not thousands of jobs there. The net result, in previous years, was that of the \$23 million, I think \$20 million went to very large projects, which had a major impact on the State of New Jersey. That left \$3 million which was lent to everyone else. Sixty percent of that money -- 60% of the \$3 million -- was lent to minority-owned businesses. So,



the MBE's certainly have been able to take advantage of the portion that was left, and there is another \$3 million to \$4 million currently available that can be used.

Now, the minority business community has primarily requested those funds through the Urban Center Small Loan Program, which provides financing primarily to retailers in urban communities. Mainly, minority-owned businesses have taken advantage of that program. So currently, we have between \$40 million and \$45 million of financing through EDA, under the Guarantee or Direct Loan Programs. Secondly, through the Department of Commerce and EDA, working together, we have the 503 Program, which is a Federal program providing long-term financing. Again, this is for small business, but it is certainly available to minority-owned and women-owned businesses. I am sorry to say that, to my knowledge, we have not been approached by any minority-owned or women-owned businesses to receive funds through that Program. The Program is only a year old, so I think perhaps part of the problem may be that it is just not known. However, we should market that Program, and let them know that it is available. There are moneys available, and we're talking about hundreds of millions of dollars of Federal funds to be distributed across the nation.

To date, over the last year, the Corporation for Business Assistance, which approves the 503 applications, approved 11 projects for \$2 million. Certainly, we can do a lot more than that; CBA is prepared to do a lot more than that, and is very actively seeking small businesses, minority-owned businesses, and women-owned businesses to apply for loans.

Finally, there is a third funding source, which is a major funding source which will be available shortly, with the approval of the Legislature. That is, the Local Development Financing Fund. The Local Development Financing Fund -- part of the Community Development Bond Act which was approved under S-701 -- approved \$45 million for businesses in Urban Aid communities. There are approximately 45 such communities in New Jersey. That Program has been developed to the point where our plan has been approved by the Capital Budgeting and Planning Commission, and bills have been introduced and pre-filed in



the Assembly and in the Senate, to fund that Program for the first year at \$15 million. What we envision is that for each of the next three years, there will be \$15 million of low interest rate -- we're talking as low as 3%, long-term -- in this case up to 25 years, fixed asset financing. I might mention that EDA financing can be for working capital, as well as for fixed asset. This Program, the Local Development Financing Fund, provides low-cost, long-term financing for businesses in Urban Aid communities. The majority of the applications are expected to come from small and medium-size firms. We expect the average loan application to be in the neighborhood of \$400,000 to \$500,000. Since I believe the majority of the businesses in the Urban Aid communities are minority-owned, we fully expect that the majority of the applications for these funds will come from the minority business community. To that end, we are instituting a marketing program. In fact, the brochure has been prepared and is being mailed out to businesses, Senators, Assemblymen, mayors, elected officials, economic development officials, and county and municipal officials, to invite them to two one-day seminars on May 23 and May 24 -- on May 23 in Cherry Hill at the Sheraton Post, and on May 24 at Rutgers in Newark, on High Street, or the now Martin Luther King, Jr. Boulevard -- to find out more about how they can apply for the Local Development Financing Funds and, of course, the Urban Enterprise Zone Program, which provides regulatory and tax relief to businesses that exist in up to ten zones within the State of New Jersey.

I think what I am summing up is that currently we have available for lending, somewhere in the neighborhood of \$50 million to \$55 million in Fiscal Year 1985, which the minority business community, the small business community, and the women-owned business community can utilize. We are encouraging these businesses to come forward, and to make use of funds where the programs are already approved. Hopefully, with the approval of the Legislature on the appropriation bill for \$15 million for the first year, we will have that program running by this summer.

In summation, I think that this Administration has, in fact, taken the steps which you are proposing in Senate Bill 544. If a new



authority were to be created which would replace the Office of Minority Business Enterprise, and would essentially replace the Inter-agency Procurement Committee, it is our judgment that in the transition momentum would be lost, and we would not be as far along at the end of this calendar year as we fully expect to be. In addition, we would lose Federal funding for the Office of Minority Business Enterprise. This year, we would lose over \$100,000 of funds from the Minority Business Development Agency, and lesser funds in the next two years. We think Federal involvement, not only in funding, but also as far as their assistance is concerned working through the business development organizations, such as ICBO and Boone Young in the State-- We think that the perhaps decreased opportunity to work with them would not be in the best interest of the minority business community.

I think what I would like to sum up with is that we concur with the end result proposed in Senate Bill 544, but we suggest that during the last nine months we have been able to put into place the tools, and the mechanisms that, in fact, will accomplish the goals you have outlined in S-544, and we would like the opportunity to actually deliver. We think we will deliver; we are committed to delivering.

Thank you very much.

SENATOR LIPMAN: Mr. Bleicki, thank you very much. I appreciate the comprehensive view you have given us of the Administration's activities and, indeed, when I began this hearing, I said that Senate Bill 544 was designed to complement the Administration's efforts which have already been initiated. I think the points in your discussion, which I would look at carefully-- I would just like to mention several points to you, so that maybe we can get our heads together on what we are trying to do.

For example, how would you answer the 4,000 businesses whom you have approached to ask -- maybe I am not using the right number here-- You are trying to determine what a minority business enterprise is. You have applications out now to find out what a MBE is.

MR. BLEICKI: Among the 16,000 vendors who are already providing services to the State--

SENATOR LIPMAN: (interrupting) Among the 16,000? All right. You have 4,000 MBE's in place; that is what you said.



MR. BLEKICKI: No, what we are saying is, we are developing a registry in which there will be approximately 4,000 names. Many of them are not currently approved vendors; therefore, one of our initiatives is to get them into the system to have them pre-qualified and certified.

SENATOR LIPMAN: You have been working on this effort for quite a while. I would just like to ask, though, what means does the State have -- does Commerce have, does the Administration have -- to monitor whether or not the 16,000 vendors, especially in the case of construction, renovation, and so forth in the State, are actually using MBE's? That is one point that always comes up again and again. We cite large figures which say what is available and how much construction is available. Yet, when it actually comes down to it, and we try to measure what has actually happened, not much has happened.

MR. BLEKICKI: I agree with you, Senator, that certainly in previous years we have not seen much happening. Again, until we receive the responses back from the 16,000 approved contractors and vendors, we will not know. Then, for the first time, we will know the hard facts about where we are. However, I did hear from the Department of Transportation today that as of January of this year, they were exceeding their mandate from the Federal government as far as set-asides for minority contractors are concerned. They indicated it is over 15% for minority and women-owned contractors. I think there is a dual requirement by the Feds. I have one piece of information -- again preliminary -- which is very encouraging. Over the last two and a half years, there has been a dramatic increase in the amount of business that minority and women-owned contractors can do with State government. That is the first thing you have to do; you have to make sure that they are qualified to do business. We have been able to define that in 1983 there were approximately, I think -- between minority owned and women-owned businesses -- a \$10 million of bidding limit. As of this year, halfway through the year, we are already at \$47 million, a four and a half-fold increase in the last year and a half, on at least the accepted ability of minority and women-owned businesses to do business with the State of New Jersey.



I think that is a credit, first of all, to the minority and women-owned businesses of the State, because what it means is that they have improved their ability to do more contracts and bigger contracts. Secondly, the list is much more extensive; there are many more vendors on the list today than there were two years ago. Thirdly, I think this Administration has made a very ambitious effort to try to bring more MBE and WBE contractors into the system by pre-qualifying them. So, I think this is due to two things: the good efforts and the work of the minority business community and the women-owned business community, but, also, the good efforts and work on the part of this Administration to bring more of them into the system to pre-qualify them.

I agree that doesn't mean a hill of beans, unless they get more business. That is the bottom line. We will now know, for the first time, what the practices have been in Fiscal Year 1983 and Fiscal Year 1984. Based upon that information, the departments of the State will then set their goals -- we hope ambitious goals -- to improve what they have done. This will be visible to everyone, so that we can be measured, we can be accounted for, as far as our performance is concerned. This has never been done before by any former Administration. I think that is a major first step, and it has to be done if you are going to have more contract work with MBE's and WBE's.

SENATOR LIPMAN: Mr. Blekicki, what I said was not at all in criticism of your efforts.

MR. BLEKICKI: I realize that.

SENATOR LIPMAN: It was just an effort to clarify.

MR. BLEKICKI: I was just forcefully explaining what we are doing to try to bridge the gap.

SENATOR LIPMAN: All right. One of the reasons this Senate bill has the nomenclature "Authority," is the fact that we have received so many complaints that our Economic Development Authority is not working for minority business. That is why this is called an Authority. That is why we have the name. You know, it may be amended; we may change it so as not to conflict. We have heard suggestions for an amendment whereby "Corporation," for example, might be a better name for it. However, that is one of the main reasons.



Finances and loans are most difficult for minority businesses and women-owned businesses, and we hope that both the Administration and the Legislature will move in a direction to correct some of these problems we're having.

I do not mean to hog the conversation. I just had a note passed to me as I was going to ask some more questions, which said, "Remember that Lincoln's Gettysburg Address was only 12 minutes." (laughter) Assemblyman Charles?

ASSEMBLYMAN CHARLES: I have a few questions I would like to ask. It seems to me that what you are saying is, that in your view, Senate Bill 544 is not necessary, in that the Administration will not be supporting it. Is that what you are saying?

MR. BLEKICKI: I am not representing the Governor's office; I am representing the Department of Commerce. What I am indicating is that our position is it would not provide additional resources, nor an additional initiative to the effort that is already in place by the Administration, to accomplish the goals spelled out in S-544. In fact, it is our opinion that it may slow down the momentum. There would be a changing of gears from OMBE, because there is no need to have two organizations doing exactly the same thing. It would be a duplication of effort, and I would think it would confuse the 20 departments of State government to have two different groups providing the same, identical services to the same client body.

ASSEMBLYMAN CHARLES: So, you would not support this particular piece of legislation. Is that what you're saying?

MR. BLEKICKI: I support the goals of the legislation, but what I am saying is we would suggest that this legislation not be moved along any further, because we think we have the proper mechanisms in place and we would like to demonstrate that, in fact, we will accomplish the goals which are spelled out.

ASSEMBLYMAN CHARLES: Then, you would not agree with those who say that statutory set-asides would promote those goals?

MR. BLEKICKI: I did not refer to the issue of whether or not there should be a statutorily-created office. I just didn't refer to that. This has been administratively initiated. In my opinion, it is



unimportant as far as the end result is concerned whether it is legislatively or administratively initiated. The first initiation was done by the Administration in this case. Certainly, we can work together on that.

I thank you for raising the issue of the set-aside, because that is one area I forgot to discuss in detail. As you all know, currently there is S-886. I forget the Public Law number; is it 430?

SENATOR LIPMAN: It's Public Law 482.

MR. BLEKICKI: Yes, 482. This sets aside 15% of State procurement for small business. We, of course, supported that initiative, because we saw that as also providing a benefit to the minority business community and to the women-owned business community. We perceive -- and I think it is the general perception of the minority business community and of ourselves -- that the State is not buying enough from MBE's and WBE's. That is the general perception, and I cannot disagree with that perception. However, we do not know, other than for two departments -- Environmental Protection and Transportation, because of their Federal mandates -- what the actual purchases are from the MBE and WBE communities. In fact, I was very surprised -- pleasantly surprised -- when the analysis for Fiscal Year 1983 for very small businesses -- fewer than 50 employees -- showed that State government was purchasing roughly around 13% or 13-1/2% of all their goods. That is 13-1/2% of \$630 million from the very small business community.

The point I am trying to get to is that I don't know what a realistic set-aside goal is. I do not know what is practical for each department. That is why, in fact, the Administration said, "Let us develop goals for each department." Some will be very high. The report that I am providing to the Governor shows that some State departments -- very large State departments -- are buying 30% of their total purchases from very, very small businesses. We're talking about millions and millions of dollars through one department.

ASSEMBLYMAN CHARLES: Are those minority or women-owned firms?

MR. BLEKICKI: As I said before, we do not have the ability yet -- but we will shortly -- to define that.



ASSEMBLYMAN CHARLES: Do you think that the establishment of this type of an Authority would further the process of defining all of that?

MR. BLEKICKI: No, absolutely not, because within three months we will be able to define it ourselves. We have initiated the process. The Department of the Treasury is going to include that data in its system.

ASSEMBLYMAN CHARLES: The \$50 million to \$55 million which you say is available for minority and women-owned enterprises -- is that currently available for funding?

MR. BLEKICKI: It is available as funding for businesses in New Jersey, and the minority business community can take advantage of that.

ASSEMBLYMAN CHARLES: Right, but the fact is, that has existed for quite a while. Is that correct?

MR. BLEKICKI: No; there is a new \$45 million program which, I think, primarily minority-owned businesses would take advantage of, because it is directed to the Urban Aid communities.

ASSEMBLYMAN CHARLES: The probability that they would take advantage of that would be increased if there were some real affirmative circulation of the availability of that money. Is that correct?

MR. BLEKICKI: Yes, and we are instituting that initiative right now.

ASSEMBLYMAN CHARLES: Is the OMBE within your Department?

MR. BLEKICKI: Yes, that is correct.

ASSEMBLYMAN CHARLES: How many people run that operation?

MR. BLEKICKI: There is a staff of six in that office; there is a staff of five in the Office of Small Business Assistance. Right now, the total Department of Commerce consists of 98 or 99 persons.

ASSEMBLYMAN CHARLES: No, no; just within OMBE, how many employees do you have going out trying to inform minority and women-owned enterprises of funding that is available, programs that are available, etc.?



MR. BLEKICKI: We have six positions in that office; we have five in the Office of Small Business Assistance, which also has a mandate with regard to minority-owned and women-owned businesses.

ASSEMBLYMAN CHARLES: So, that is 11 people.

MR. BLEKICKI: Yes, 11 people. There are financial specialists who go out, visit banks, and run seminars to that effect, and I am also personally going out, for example, on May 23 and May 24.

ASSEMBLYMAN CHARLES: Do you have any plans within your Department to increase the number of persons who take care of the services that minority and women-owned enterprises need?

MR. BLEKICKI: No. However, what we are doing is, we have a field force which has not been involved in this process before -- there are nine Field Representatives -- and they will be going around also, marketing and educating the business community regarding those programs. Therefore, we have a total of about 20 employees involved.

ASSEMBLYMAN CHARLES: Thank you.

SENATOR LIPMAN: Mr. Blekicki, maybe we can sit down and talk about this together sometime, because some of the figures are deceptive. For example, Transportation has a high percentage of participation for minorities, but they are not New Jersey minorities. Because of the Federal guidelines, they can bring in minorities from other states. We have all kinds of problems which are not examined closely, such as that one. That is why I'm saying perhaps we can sit down and talk together.

MR. BLEKICKI: Sure. Certainly, the funding is only for New Jersey-based firms. Thank you very much for the opportunity.

ASSEMBLYMAN ZIMMER: May I ask a couple of questions?

SENATOR LIPMAN: Oh, Assemblyman Zimmer, I keep forgetting you're over there. If you have questions, please go ahead.

ASSEMBLYMAN ZIMMER: First of all, Mr. Blekicki, would you provide us with a copy of the contract between the State and the Federal government?

MR. BLEKICKI: Certainly.

ASSEMBLYMAN ZIMMER: You said that a lot of what is addressed in this legislation is addressed in the contract.



MR. BLEKICKI: Further, we can provide an analysis of the overlap in a two-page form -- which we have already prepared -- between our contract and our other efforts, and what is proposed here. We can provide that readily.

ASSEMBLYMAN ZIMMER: If, indeed, there is some initiative you feel is really complementary to yours which would not throw your efforts off the track, I think it would be helpful if you, in conjunction with the Counsel's office, would propose specific amendments to us that could make this legislation mesh with your ongoing work, so that it wouldn't work at cross-purposes, but rather would be mutually reinforcing. We're here to talk on a general basis right now at this Joint Committee hearing, but as this goes through the legislative process, it will be helpful to us in the Committee analysis if we have specific proposals.

MR. BLEKICKI: Of course, I did not direct my comments to any of the very specific issues, such as whether, in fact, women-owned businesses should be considered within the definition of minority-owned business. I think--

SENATOR LIPMAN: (interrupting) They are separate; it is a separate goal.

MR. BLEKICKI: Well, it is a separate goal, but the definition in the legislation does include women-owned businesses as being considered minority-owned businesses, if I remember correctly.

SENATOR LIPMAN: No.

MR. BLEKICKI: My memory fails me then; I'm sorry.

SENATOR LIPMAN: It's minority business enterprises and women-owned businesses. Mr. Bleicki, women business owners do not consider themselves a minority.

MR. BLEKICKI: That's right, exactly.

SENATOR LIPMAN: I can tell you that.

MR. BLEKICKI: What it says is: "'Minority business enterprise' or 'enterprise' means a business at least 51% of which is owned by minority group members or women" -- or women.

SENATOR LIPMAN: Right, women business owners.

MR. BLEKICKI: Which means that women-owned businesses are considered minority businesses.



SENATOR LIPMAN: No, that means -- perhaps the language needs clarification -- women business owners have 10% in this legislation, and minority business enterprises have 15%.

MR. BLEKICKI: Yes, I realize that as far as the set-aside is concerned.

SENATOR LIPMAN: That's right. The definition is not similar; it is the same in the Federal guidelines. For instance, Transportation is a good example. The percentages are 12% and 4% -- you know, the percentages of the goals desired.

Assemblyman Zimmer, do you have more questions?

ASSEMBLYMAN ZIMMER: Yes, I would like to ask two more quick questions. Do you have any idea at this stage what the range of goals will be for the 20 cabinet departments?

MR. BLEKICKI: No, I do not, because until we receive the responses back from the businesses so we can determine how much business we have been doing with them, and look at our programs for Fiscal Year 1985 to see what sort of contracts we will be letting, we cannot do that. For example, in Fiscal Year 1983, the Department of Commerce had 13-1/2% of its contracts, or 13-1/2% of \$3 million, for very small businesses. In 1984, it is going to be more difficult for us to do that, because we had one large contract of \$1.5 million in 1983, which went to \$2.5 million in 1984 and, if the Legislature approves it, it will be somewhere in the neighborhood of \$6 million to \$7 million in 1985. That one contract is our advertising and promotion program, which is with a major and very qualified advertising agency. Therefore, for the Department of Commerce, it is becoming more and more difficult for us to meet that goal if we encompass all of the purchases. So, I think each department has to set its own goals within its own realities.

ASSEMBLYMAN ZIMMER: You mentioned very small businesses frequently. Will there be a separate goal for very small businesses?

MR. BLEKICKI: No. The only reason we define very small is because that is the only category we could pull out of the data base which presently exists. That is because of the affirmative action requirements. Smallness by Federal definition is 500 employees. The



Inter-agency Procurement Committee has not defined smallness for its activities yet, until we know what the precise data is.

ASSEMBLYMAN ZIMMER: My final question is, why hasn't the \$50 million or \$55 million, which you say is available, been taken advantage of, and what can be done, other than the field work you mentioned, to make that money available? Could it be that there are administrative hurdles which are too difficult to overcome, or is it merely a problem of communication?

MR. BLEKICKI: Well, I can't speak to the precise criteria used by the New Jersey Economic Development Authority, but I believe the criteria they use is very consistent with what banks traditionally use for businesses. I would assume that minority-owned businesses and women-owned businesses, being younger, and, therefore, perhaps being smaller, might find it difficult to provide the degree of collateralization, or the history of success that other businesses can provide. That is a reality that exists because of the problems which have faced the minority business community and the women business community in the past. I think that as they become more successful, that will be overcome. However, that is a practical problem, and we have to recognize it.

Regarding the other problem, definitely we have not informed the business community well enough that these programs exist. I'm sure the majority of MBE's and WBE's, and the small business community in general in the State, do not know the money is available. I'll bet you dollars to donuts on that one. I have no data to prove it, but I just firmly believe that.

SENATOR LIPMAN: Mr. Blekicky, sometimes it is complicated by having to go through your local Economic Development Corporation; that further complicates the picture. That is probably why not too much has been said about some of these millions which are available, in the case of the urban situation.

MR. BLEKICKI: They can go directly to the EDA; they do not have to go through an intermediary.

SENATOR LIPMAN: Well, the State was supposed to be able to provide that kind of assistance, but usually they have to have the permission of the local government to--



MR. BLEKICKI: (interrupting) There is a real concern in the Local Development Financing Fund, and that is, the legislation says specifically that the municipality must sponsor the application. So, yes, that is a practical problem. Hopefully, the cities will gear up and be fully supportive of that activity.

SENATOR LIPMAN: All right. Thank you very much. We had you on the hot seat for a while, and we appreciate your testimony.

MR. BLEKICKI: I appreciate the opportunity.

SENATOR LIPMAN: We know there are some people from Treasury here. Let's see, which other State departments have representatives here besides Treasury and Commerce? Are there any others? (response from audience) Oh yes, there is a representative here from the Public Advocate's office.

There are two people here from Rutgers University, Patricia Johnson and Dick Barber. (Senator Lipman consults with Mr. Capalbo about witness list.)

ASSEMBLYMAN CHARLES: Excuse me. While Chairwoman Lipman is attending to some business, I just want to say that in the beginning I requested that you limit your remarks. I was unreasonable when I said three to five minutes; I realize that. But, we would appreciate it if you would limit your remarks. Try to confine them, out of consideration for the others here who would also like to testify.

SENATOR LIPMAN: We will now hear from Mr. Dick Barber.

**RICHARD E. BARBER:** Fine. Senator Lipman, members of the Committee: For the record, I would like to state that I think the previous speaker, the gentleman from the Department of Commerce, is overly optimistic in his assessment of minority business in this State. I would encourage him to walk a few miles around this State during the course of a week in my shoes, or with me, and I think he would see a different picture.

SENATOR LIPMAN: Will you please speak louder, Mr. Barber?

MR. BARBER: I'm Dick Barber, and I am President of All-American Associates. I am also Vice Chairman of the Economic Commission of the National Assembly of Black Churches. However, our National President, Jim Hurt, is here, and he will present the perspective from the National Assembly of Black Churches.



I welcome this opportunity to present my views on the importance of Senate Bill 544, the Minority Business Development Authority Act, and how vital the passage of this legislation is to the successful development of business enterprises owned and operated by minorities and women in our State. This occasion provides me the opportunity, also, to publicly commend you, Senator Lipman, for your visionary leadership in minority business enterprise development, and to thank you for your personal assistance in the development of this legislation.

I approached Senator Lipman in 1981, and shared with her my experience and assistance as a consultant to the Pennsylvania Department of Commerce in 1971, for the development of similar legislation which created the Pennsylvania Minority Business Development Authority. I am grateful to you, Senator, for the significant role you are playing in promoting business development and ownership for minorities and women.

The role of government in the development and assistance of private economy efforts is nothing new. History is replete with case after case of efforts by the Federal government to assist an industry, a special group or groups, a geographical area, or political subdivisions due to special circumstances experienced by these entities, from assistance to the airframe industry after World War II, to support and subsidy programs today for the agriculture industry; from veterans' preference and the G.I. Bill for World War II, Korean, and Vietnam veterans, to trade adjustment payments for displaced American workers. Likewise, State government should do no less.

Historically, minorities and women have not been able to participate fully in the economic mainstream of America on a large-scale basis for a variety of reasons. These reasons range from over-neglect and systematic discrimination, to the unavailability of meaningful and appropriate technical assistance and financial programs. To overcome this situation, innovative technical assistance, capital formation, training, and managerial development programs are needed. Through these efforts and problem analysis, well-designed and properly-administered economic development programs can compensate for



much of the lack of business acumen and experience usually found among these groups. Business problems in an underdeveloped area are much different from those encountered by big business, or even local small business enterprises operating in affluent areas. The markets are different, both socially and economically. Capital availability and credit lines are low in one, and relatively high in the other. Business enterprises in the minority communities are generally smaller than their counterparts in other locations. Whereas much of the business in a minority community is owned by persons outside the immediate community, the reverse is rarely true.

Such special problems require new, unique, and innovative approaches for their successful resolution. The provisions of Senate Bill 544 provide for such an approach. It not only addresses the matter of technical assistance and financial programs, but it also provides a framework and a mechanism for these groups to actively participate in the purchasing and procurement system of State government on a set-aside basis. The framework and mechanism provide appropriate safeguards for reasonable and fair pricing of goods and services on a competitive basis. These are indeed long over-due, but significant steps for the State of New Jersey, and we need your support to bring minority and women-owned businesses into the mainstream of the American economy.

Our task is great; our mission is urgent; and, our goals are ambitious, but achievable. Through a partnership with the private sector, the community-at-large, and a committed State government, we should do our part in fulfilling and implementing the provisions and intent of Senate Bill 544. To this end I pledge my personal cooperation and full support to this endeavor. I encourage you to support the passage of this legislation, thereby demonstrating your appreciation and commitment to the determined efforts of minorities and women as they endeavor to gain an economic stake in the economy of New Jersey and of this nation.

Again, thank you for this opportunity to share my views and thoughts on this important and historic piece of legislation.



SENATOR LIPMAN: Thank you, Mr. Barber. Ms. Johnson, you're from Rutgers, but you're speaking as a private citizen. Is that correct?

**PATRICIA E. GREGORY JOHNSON:** Yes. I am from another program within the Graduate School of Management.

My name is Patricia Gregory Johnson, and I am making this statement as a private citizen who is an advocate for minority business development. I am currently the Director of the Rutgers University Technical Assistance Program. Our Program is a university business development center funded by the Economic Development Administration within the United States Department of Commerce. I am also a member of Governor Kean's Advisory Council on Minority Business Development. I believe that the establishment of the New Jersey Minority Business Development Authority, and the designation of certain State purchases as minority set-asides, will enhance the development and success rate for minority business enterprises in the State. Additionally, it will clearly demonstrate the genuine interest of the State Legislature and the Office of the Governor in the economic growth and security of business among the State's minority population.

Traditionally, minorities have not been participating in the American free enterprise system at a rate comparable to their non-minority counterparts. However, statistics now indicate that minority-owned businesses are beginning to make some progress. Obviously, however, there is a long way to go before the minority business sector will have a significant impact on the economy. In order to improve this condition, particularly in New Jersey, creative planning and the implementation of efficient economic development programs are necessary and critical to success in this area.

Senate Bill 544 has the potential to enhance opportunity for full participation in free enterprise by minority-owned businesses. Some of the areas within the bill of most concern to me are the following: The inclusion of a fiscal note in this bill so that proper attention may be given to developing sufficient funding for the operation of the New Jersey Minority Business Authority and the implementation of the programs proposed in the bill; that special



attention be given to the issue of bonding of minority business enterprises. This is an area of extreme importance and one that is most infrequently dealt with in other programs; and, the elaboration of the three-pronged approach to financing of minority businesses.

The bill states that the Authority will have the power to make direct loans, to guarantee and insure loans made by private financial institutions, and to establish a loan referral program. I would like to see New Jersey establish more creative financing techniques, such as the utilization of venture capital companies. Our use of such financing would help to bring New Jersey into the advanced arenas currently used in many other states. I would like to see the relationship of the proposed Authority to already existing structures clarified, such as the Governor's Advisory Council on Minority Business Development and the Office of Minority Business Enterprise within the Department of Commerce and Economic Development. I believe that these separate entities will be able to coordinate their efforts to avoid duplication and to maximally support their common goals of furthering minority business development in New Jersey.

Passage of this bill creating the Minority Business Development Authority is critical to the life of minority-owned businesses in our State. The establishment and success of the Authority will signal not only to New Jerseyans, but to the nation, that our State is among other leaders in the forefront supporting the concept of minority business development and economic security.

Thank you.

SENATOR LIPMAN: Thank you very much. Are we going to have a copy of your statement?

MS. JOHNSON: Oh, yes.

SENATOR LIPMAN: Please leave it with our stenographer, because there are some very good suggestions in there. Assemblyman Charles, do you have any comments?

ASSEMBLYMAN CHARLES: I would just like to thank the last two speakers who testified as private citizens here today. We welcome the testimony of private people, as well as experts in the area.



SENATOR LIPMAN: Our next speaker will be Mayor Melvin Primus from the City of Camden. Good afternoon, Mr. Mayor. Thank you very much for coming.

MAYOR MELVIN PRIMUS: Good afternoon. First, let me congratulate you, Senator Lipman, for the drafting of the bill to establish the New Jersey Minority Business Development Authority and, also, congratulate you and the Assembly people for conducting hearings on this particular bill.

Needless to say, I am in support of such a bill and of such an Authority in the State of New Jersey, to be able to provide the assistance needed to minority businesses in the State. I think I have a unique background for speaking on this subject, because prior to assuming the role of Mayor of the City of Camden, for ten years I worked for a local development corporation, starting out by providing assistance to minority entrepreneurs as it related to their marketing and financial plans. Throughout my tenure there, I also served in a position where I was responsible for the operation of several minority-owned businesses. So, I have seen the entrepreneur side of the problem. Having gone on to City Council, I saw the government side and, in the Mayor's chair, I see how they all come together. There is something missing as it relates to the minority entrepreneurs. I believe that this particular bill, this particular Authority, could be the bridge that would allow minorities access to greater markets.

I think that is good, not only for the minority entrepreneurs, but for all of us in the State of New Jersey, as we make those businesses more viable. I think that is what we are really talking about. I come from an urban area, and we have a large number of minority businesses located in the City of Camden. For a variety of reasons they lack access to the major markets. It is frustrating for me, as Mayor, not to be able to channel, on a competitive basis, more business to businesses which are located in the City, those businesses that hire our residents, those businesses that pay our taxes. For a number of reasons, which I do not really think I need to go into -- I think everyone in this room is aware of these reasons -- they are precluded from those markets. So, an Authority set up to provide that



kind of assistance is one, I think, that is absolutely essential to the financial well-being, again, not only of the minority community, but of the State as a whole.

It does a lot for the municipalities and, again, I will use Camden as an example. If we can stabilize the minority businesses that are located there, it will stabilize the tax base and provide employment opportunities for its residents. This will go a long way toward the redevelopment of urban areas, which is something we in this State need very desperately.

We are certainly here for any support we can give. I know there has been some discussion that much work is about to be done by the Administration. I am not suggesting that is not the case, but I think we really need the flexibility an Authority could offer. Again, I have seen many authorities operate, and authorities tend to have much more flexibility than even we in municipalities have, as it relates to contracts. From what I understand, all the authorities in the State are now coming under the direct fiscal control and scrutiny of the Department of Community Affairs. That has not been the case in the past. If this Authority is established, I am assuming it would also be fiscally responsible to DCA, and would support them.

Again, I think the bottom line is that the creation of such an Authority would be an asset to the State. I think the State could take the lead -- or one of the leads -- in this country, to show that we are very much concerned about all the residents of the State, and that we are taking affirmative steps to open up the process to all of us. I think that is really what we are talking about, in terms of making an open and competitive process for all people in this State.

I have no problems at all in conceptualizing a State Authority providing assistance to business people, working with them to provide financial assistance, and providing a set-aside. I believe that will ensure us equal access. It is also very frustrating for me, as a Mayor, not to be able to have a set-aside situation in the City of Camden. Again, while I don't know that that is necessarily addressing this particular bill, I think it is something you might want to consider in the future. If this set-aside goes into effect, it might



be passed down to municipalities, where they might also have the ability to set aside a certain portion of their contracts and financial programs for minorities.

SENATOR LIPMAN: Mayor, do you mean that the State should give a framework, and it would then sift down to the municipalities?

MAYOR PRIMUS: I would like you to consider that.

SENATOR LIPMAN: Can you do that by local ordinance?

MAYOR PRIMUS: No, we cannot do that by local ordinance.

SENATOR LIPMAN: You can't? It has to be a State law?

MAYOR PRIMUS: Yes; as it relates to the bidding procedures, we come under the direct control of the State of New Jersey. As an example, the City of Camden recently introduced an ordinance which was going to require residency for all construction jobs that were funded through the City. There was also a minority business set-aside for all projects funded through the City, and for all construction jobs, 50% of the persons who work on those jobs would have to be City residents. That was challenged by the local unions. It went to the Supreme Court, and the Supreme Court recently handed it back down. So, we have to go back through a lower court in the State of New Jersey. Hopefully, we will be victorious there, so we can again provide for the residents who make up our municipality.

I know there are a number of people who wish to testify today, so in summary I would just like to again offer my support for this particular bill, because I think it is something that would be good for all of us.

SENATOR LIPMAN: Thank you very much, Mayor. It was so nice to have you here. Assemblyman Charles?

ASSEMBLYMAN CHARLES: Yes; I would like to thank the Mayor for attending this afternoon. Also, I would just like to put on the record my concurrence with the viewpoint he took; I guess it was in response to one of the positions taken by the representative from the Department of Commerce and Economic Development. I think I agree with you, Mayor, that this thing is so important it should be in some statutory legislated form, as opposed to the administrative executive form it is presently in, under the arrangements that have been discussed with Mr. Blekicki.



MAYOR PRIMUS: That's right.

ASSEMBLYMAN CHARLES: I see this as important enough that it should not be a matter left entirely to the Executive Branch. The Legislature has its responsibility, and I applaud Senator Lipman for her recognition of this important fact, and her introduction of this legislation. I think that fulfills the role of the Legislature in this matter, and leaves the question, not to the good will of the Administration, but to the compulsion of the law.

MAYOR PRIMUS: That's right.

ASSEMBLYMAN CHARLES: I think we would feel much better. Business is better conducted on that basis.

MAYOR PRIMUS: Sure. I think the Administration should be commended for coming forward with an Executive Order dealing with the issue, but, as you have indicated, Administrations come and Administrations go. If the Legislature were to act, it would be a permanent fixture. I think that is what we need here in the State of New Jersey.

ASSEMBLYMAN CHARLES: Thank you, Mayor.

SENATOR LIPMAN: Thank you so much for coming, Mayor.

We will now call on Councilman Donald Tucker, National President of the Local Black Elected Officials Association. We welcome you to this hearing.

**COUNCILMAN DONALD TUCKER:** Thank you very much, Senator Lipman, and also Assemblyman Joe Charles. I will try to be as brief as possible, but I think it is important to at least raise a couple of issues I think need to be placed directly in the record. I come here today to support Senate Bill 544; however, I have some concerns which relate to the bill, and I will try to go through those. I believe it is important for us to at least put on the record the major reason why S-544 is coming into existence.

We have seen Federal legislation promulgated dealing with set-aside programs. We have seen Federal legislation specifically dealing with the whole question of the Civil Rights Act of 1964 and, obviously, the Voting Rights Act of 1965. What we have done, as persons who are elected officials -- in some cases we have just



accepted the fact that civil rights or affirmative action programs need to be discussed, without really facing the realization that the motivating factor for these particular legislative actions, or legislative initiatives, still rests with the fact that we do not live in a completely open society.

I think we are all knowledgeable of the fact that racism is still alive and well in the United States and, more specifically, here in New Jersey. It is not exempt from State government. I think we need to again consistently indicate that whole kind of hard reality. I also want to say that we have made progress as minorities. I think we also need to state that. I am not here to say that minority individuals, specifically Blacks within the State of New Jersey, or within this nation, have not made any progress. With the enactment of the Voting Rights Act, we made a certain amount of progress, but I think it is also important for us to understand where we came from, where we are right now, and, more specifically, where we need to go. I think the best way to describe it is with the enactment of the Civil Rights Act of 1964. If we just look at local elected officials, at that time we had 500 persons who were elected officials. The count which was promulgated by the Joint Center for Political Studies as of 1984 -- between the years 1964 and 1984 -- shows we have escalated our number by approximately one thousand percent. If people look at those figures and say, "If you had 500 in 1964, and you currently have in excess of 5,000 in 1984, you have made progress and you clearly should be satisfied with that particular perspective," what I would just like to say is, there are over 560,000 elected officials in this country. If you take that number and divide it, you will clearly understand that Black elected officials only represent 1% of all elected officials in this country.

So, I think we need at least to set the record straight on this. I know I support Senate Bill 544; I look at it as a complement to what the Governor is doing with his administrative fiat. I also understand that if it was clearly up to the Governor himself, personally, to basically deal with the problems of minority contractors and other MBE's, we would not necessarily have a problem with



interacting. I believe we need to understand that even though the Governor may say, "Let there be light," somewhere in the bowels of the bureaucracy, someone is saying, "Turn the damn light off." That is the issue we are talking about. So, administrative fiat is extremely nice, it is very creditable, and I respect the Governor for it. But, the rules of law are established by legislative bodies, and I think we need to really understand that.

The other point I wanted to make is, I think we also need to look at some of the legislation the Senate and the Assembly have put forth which has had a positive impact, and how we got to the point of looking at Senate Bill 544. I know we have supported -- the City of Newark and other elected officials throughout the State who are not only Black -- the whole question of the enterprise zones. We have some minority representation -- minority edicts embodied within there. I think it is a very good bill, but we also need to understand that the enterprise zone concept operates under the assumption that you have funds. So, if you are a minority or a MBE, if you are in that particular perspective where you have funds to, in effect, invest, and take advantage of the tax incentives, the enterprise zone helps you. But, in most cases what happens is, you do not have a large amount of capital funds, so you now become a sub of a sub in regard to the enterprise zone legislation. I think it is complementary; I think it is extremely good, but I think that we need to add on to that particular bill.

Also, I think when we start to look at the Executive fiat of the Governor, we're talking about the basic concept of listing, or a head count of minorities, and basically doing research. I do not believe we need to study as much as we have in the past. We know what the basic problem is; in effect, we know how to change that problem. The problem is, we are still the victims of studies, rather than the victims of legislated action.

I think that when we start to look at Senate Bill 544, we are now seeing the proposal, or the initiative to get into the action and go beyond the study. I respect the Governor for putting forth his initiative, but I think we have to deal now with the whole hard reality of action.



There is one other point I would like to comment on, the small business set-aside initiative, which, again, is a step in the right direction. I believe that SBE's have a role to play within State government. Clearly, we supported that particular piece of legislation. But, what we are finding is-- I know that as a Councilman within the City of Newark, we are finding the fact that SBE's do not really totally address the issue of a set-aside with regard to minority contractors or minority MBE's. We know that clearly the vast majority of MBE's will be affected by the SBE legislation, but that still does not deal with the question of minority capitalization. It still does not deal with the question of subsidizing, or deal with the question of minority bonding, and it still does not deal with the question of sanctions dealing with the State government, which may very well follow the Governor's edict, but not really move forward in that regard.

What I am saying is, I believe that Senate Bill 544 takes into consideration a lot of those particular elements, and we need to move forward on it.

I would like to just raise a couple of questions. These are not questions where I am asking for direct answers today, but I believe they need to be qualified in the final draft of the bill. The first question deals with the protected class. The protected class, by Federal edict, indicates those persons who were victims of discrimination, victims of racism, or victims of poverty or deprivation. That was when some of the initial legislation was originally drafted. The creation of what they refer to as the "protected class" is to, in effect, provide those persons who were victims of discrimination an opportunity to effectively compete within the overall society. I raise this issue as a person who is an elected official within the City of Newark, and who also has representatives of his particular constituency who are affected by this bill.

My concern, and again I will raise it, because I think the Senate and the Assembly need to deal with it, is the classification. Your bill talks about Blacks, Hispanics, Asian-Americans, American Indians, and Alaskan Natives. That is part of the Federal legislation,



but in the Federal legislation they talk about Portuguese coming from Brazil being part of the protected class. They do not talk about Portuguese coming from Europe being part of the protected class. What I am raising with you, is that if there is no quantification within the body of the bill that separates those two, as it does in the Federal legislation, we may very well be attempting to resolve a matter, but having it so vague that it may or may not be able to be resolved. So, I raise that issue with you as a question, and I am hopeful that in the final legislation you will entertain it.

The other point I wanted to raise with you is the whole question of sanctions -- the question of the 15% set-aside for minority contractors, and the question of the 10% set-aside for women. Clearly, the Authority would have that kind of responsibility, but I believe it is important that the Authority not just have the ability to resolve differences between minority groups or protected individuals. I think the Authority has to have some sort of authority to ensure that department heads within State government can effectively implement the set-aside legislation. If sanctions are not developed, then what you may very well find at the end of the year when these particular department heads write up their reports is, they'll say to you in a very nice and polite way, "I'm very sorry I made a mistake." My concern is that there has to be more sanctions dealing specifically with the department heads of State government during the contracting process. I think that is a point I want to raise very strongly.

The other point deals specifically with the classification of the 15% minority and, also, the 10% women. I support the position, because women -- particularly Black women -- are clearly victims of sexism and, also, racism. However, I believe that when we are looking at White women, we have to have some protective mechanisms embodied within that, so that a White MBE does not come in and say, "I will now have my daughter," or my sister, or my mother, "create a development corporation and fall into that classification." I do not necessarily believe that it needs to be embodied within the State statute, but I believe the responsibility of setting up rules and regulations dealing with classification needs to be included within the powers of the Authority, so that protective mechanisms can be embodied within it.



There is one other point I would like to highlight, and that is the question that was raised by Mayor Primus regarding local initiative -- dealing with local governments. Ironically, it was the same question I was going to raise. Newark clearly has an affirmative action plan in which we have a 25% goal. We do not have a set-aside. We have received numerous legal opinions from the corporation counsel's office indicating that unless an enabling bill is approved by the State Legislature, cities are prevented from coming up with set-aside legislation. I am hopeful the bill can be amended, which would at least make it permissive legislation within local municipalities to adopt a similar version of this, if not the creation of an authority, at least the ability to establish set-asides. Right now, with all the interaction within the City of Newark -- and clearly Newark is not unique -- by the State of New Jersey, at least based as a body politic of law, we cannot do set-aside legislation. I know we are in the process of dealing with small business legislation, but that will not totally meet the overall needs I articulated earlier.

Again, I would just like to indicate my support of the United Minority Business Brain Trust. I know it was very interesting when I talked directly to Mr. Bodden, and also some of the other members of that group. Somehow or another, the data base we are dealing with and the data base Mr. Blekicky is dealing with may be different. Based on the Brain Trust analysis, they are of the opinion -- and I support that process -- that minorities, at this point in time, are in receipt of only 2% of the overall State government contracts, or business with State government. Maybe after Mr. Blekicky finishes his research, he may change his figures, but that still does not negate the fact that we need a legislative initiative that is hard line, and that says: We within the State of New Jersey recognize our role and responsibility to minorities and women; we within State government recognize the fact that minorities and women have been discriminated against within the processes of our society; and, we feel strongly enough that this should be a statutory edict to rectify that situation. Frankly, I believe that all administrative edicts have a tendency to be limited in enforcement.



I would like to say one other thing and, again, I do not want to be political to any degree. I will just say it in this way: Some of the administrative edicts that have been developed, vis-a-vis civil rights going back in Washington as far as Truman-- Some of you may very well remember that part of the process of our President's election was to recall all of those administrative edicts, even going back as far as Truman. Some of those administrative edicts were mandatory requirements with regard to dealing with EOF, before there even was an EOF program. Some of those things dealt specifically with a reporting requirement before there was a Civil Rights Act. What I am saying, in effect, is that an administrative edict is important. It pinpoints the integrity of the individual who promulgates and writes it, but it is not a point of law.

As I have said, above and beyond the concerns I have raised with the law, I would like to just clearly indicate that I am in total support of the law.

SENATOR LIPMAN: Thank you very much, Councilman Tucker. Do you have a written copy of your statement?

COUNCILMAN TUCKER: No, I do not.

SENATOR LIPMAN: Well, I hope our reporter was able to get it all down. We are particularly interested in your discussion of the sanctions, and of the local situation. Assemblyman Charles just offered to put something in the legislation, on the Assembly side, for a local set-aside program. Do you have what is called "local initiative" now?

COUNCILMAN TUCKER: No, we do not have local initiative. What I'm saying is--

ASSEMBLYMAN CHARLES: (interrupting) You want some enabling legislation to allow you to pass those ordinances?

COUNCILMAN TUCKER: (continuing) We need to embody within the bill enabling legislation which would authorize us, if we choose to do so, to approve an ordinance and make it a law.

SENATOR LIPMAN: Assemblyman Zimmer, do you have any questions?

ASSEMBLYMAN ZIMMER: I have no questions.



SENATOR LIPMAN: Oh, all right. Thank you very much, Councilman. Next, I have a man who has to leave to give testimony in North Jersey, the distinguished counsel, Junius Williams, who directs the Essex County Legal Services Office.

JUNIUS WILLIAMS: Thank you, Senator. Good morning members of the Joint Committee, and Assemblyman Charles, my good friend. I am an attorney, and I am here in a private capacity today. As Assemblyman Charles can tell you, it is very easy to follow a distinguished counsel such as Mr. Wheeler, who has sort of laid it all out for us legally. So, I am here to take a little different tack.

I am also a resident of the City of Newark. I am giving testimony today because I am concerned about the state of our cities and the lack of continued economic growth among minorities in this State. I believe that if our cities are going to have a chance to rebuild and grow, the economic benefits must be equally distributed.

It is important that our young people see minority businesses not only struggling, but flourishing. If we want to seriously address the problems of crime in our streets or apathy among our young people, we have to look at the alternatives that are available to them on a day-to-day basis. Most of our current thinking about crime, violence, and antisocial behavior puts special emphasis on the need for more policemen. Police and policing are necessary, but many of today's social problems are deeply rooted in the inability of our youth to find employment. Minority business development not only provides a source of jobs in our neighborhoods, but successful minority business development can serve as a catalyst for a spirit of entrepreneurship, so necessary if our youth are expected to save themselves, and serve themselves. If we are interested in building strong leaders, they have to know that there are real opportunities for them in their own communities. We know that unemployment figures among minorities are growing; for many of our youth, the opportunity for a better life can, and must, come from the opportunity to look toward self-employment in a business of their own.

Minority businessmen and businesswomen can serve as role models in developing this ambition within the inner city. However,



minority business enterprises do not reflect a fair proportion of business activity in New Jersey, either by their gross receipts or by their absolute numbers. The opportunities for minority businesses to grow have historically been discouraged. In a recent report entitled, Blacks in New Jersey, the New Jersey Black legislators cited a number of recommendations towards minority business enterprise development:

1. Establish a uniform definition of minority business applicable to all State procurement contracts;

2. Establish mandatory goals for all State procurements and grants to localities and public and private institutions on a contract-by-contract or agency-wide basis for minority-owned businesses;

3. Sign Senate Bill 3191 and Assembly Bill 3244 to permit the State to waive the bonding requirements for construction of public projects and the purchasing of materials. I understand that has been done;

4. Expand loan and loan guarantee programs available to minority businesses;

5. Enact Senate Bill 451 authorizing the New Jersey Commission on Capital Budget and Planning to set aside for bidding, by minority enterprises, designated projects or portions of projects;

6. Vigorously implement and enforce P.L. 1979, which is the law against discrimination. Further, develop regulations to ensure the utilization of small and minority businesses in subcontracting activity; and,

7. Passage of Senate Bills 874 and 416 which would create a Department of Commerce and Economic Development and an Office of Small Business Assistance.

The present bill, Senate Bill 544, introduced by Senator Wynona Lipman, will establish an Authority, legislatively, to provide financial and technical assistance to minority businesses. It will help foster many of the above objectives anticipated by the legislators, and will provide a meaningful base for the development of successful minority businesses to serve our general urban population, including our youth.



So ends my printed statement. However, I could not help but hear some of the remarks made earlier by Mr. Blekicky. I think we have to really look -- aside from the legal analysis -- at the legal value of the Authority as proposed under Senate Bill 544. Many of my colleagues have pointed out that it is far better to have something set in legislation, than to be simply a part of an Executive Order, because of the changes in Administration.

In addition, because of the nature and forthrightness of the commitment as set forth in Senate Bill 544, the whole question of minority businesses will be put on the front burner, instead of on the back burner. I think we need that kind of symbolic commitment coming from the highest source of authority in this State -- certainly one of the highest sources of authority in this State -- and that is the State Legislature.

Finally, I believe the question of duplication can be avoided by cooperation with the legislative mandate coming out of the Authority that will be set forth. I wish to say in closing that the United Minority Business Brain Trust has, in my opinion, set the tone in this area. They continue to carry the ball magnificently, and I think we have all learned from their efforts. So, I want to thank them particularly, as well as you, for inviting me to participate.

SENATOR LIPMAN: Thank you, Mr. Williams. Assemblyman Charles, do you have any questions?

ASSEMBLYMAN CHARLES: No, I don't. Thank you, Mr. Williams.

SENATOR LIPMAN: Mr. Jerome Harris. Are you representing Plainfield?

JEROME HARRIS: I am representing the Mayor of Plainfield.

SENATOR LIPMAN: Oh, you're representing Mayor Taylor?

MR. HARRIS: Yes.

SENATOR LIPMAN: Thank you.

MR. HARRIS: Senator Lipman, Assemblymen Charles and Zimmer: I appreciate this opportunity to speak concerning Senate Bill 544.

SENATOR LIPMAN: Excuse me. Did everyone hear me? This is the representative of the Mayor of Plainfield. We had some inquiries as to where the Mayor was. I wasn't sure I spoke loud enough. So, here is Mayor Taylor's representative.



MR. HARRIS: Thank you, again. As City Administrator, I am responsible for the Mayor not being present this morning, by virtue of the fact that I scheduled some meetings for him at the Port Authority. As a result, I have some testimony which I will submit for him. The Mayor and the majority of the City Council in the City of Plainfield are in support of Senate Bill 544 primarily because the citizens and the Administration in Plainfield have put a high priority on economic redevelopment and revitalization. A key component of that includes minority business development.

The three key aspects of the proposed Authority -- the provision of technical assistance, the provision of financial assistance, and the set-aside provision -- provide an opportunity to ensure the accelerated development of minority businesses. The particular aspect I would like to focus on in our testimony, however, is the provision of financial assistance. Too often, as we focus on mechanisms to provide financial assistance, the absence of venture capital is an obvious barrier to the development of minority businesses. However, the instruments which exist primarily address themselves to the provision of fixed-asset financing, providing little opportunity to provide bridge operating capital.

If the Authority, as it is conceived of, can provide a mechanism for short-term bridge financing in the area of operation, I believe it will be able to significantly reduce the number of small minority business failures due to inadequate financing.

I would like to join my colleagues from the City of Camden in their comments concerning the need for permissive legislative authority for local set-asides. The Human Relations Commission in the City of Plainfield has recommended to the Mayor and Council the adoption of a set-aside program; however, we have been advised by legal counsel that we will be unable to enact that ordinance due to the absence of permissive legislation at the State level. So, we too join in urging the enactment of such legislation.

There are a number of additional points I would like to raise, as they relate to the question of an appropriate form for this type of assistance. Here in the State of New Jersey, when there has



been an opportunity or a major problem in recent years -- as pointed out by the Meadowlands and the New Jersey Transportation Corporation -- when those opportunities were seen, it was deemed appropriate by the State Legislature to create, in fact, authorities or corporations. I believe the suggestions made by previous speakers that administratively-created offices or bureaus might be able to accomplish the goals that have been outlined in this legislation, misses the fact that the underdevelopment of the minority business community is every bit as much of a resource as the Meadowlands represents. For us in urban areas, the likelihood that unemployment will be adequately addressed is best addressed in the formation and development of minority businesses. The underdevelopment of minority businesses in our area will guarantee that the downward spiral of our tax base in Plainfield -- which has decreased by \$5 million over the past eight years -- will continue.

I urge you to move forward with the pursuit of this bill in the format of an authority or a corporation. It is our belief that those would be the most appropriate vehicles or mechanisms for implementation of the goals.

Again, I would like to thank you for the opportunity to present this information.

SENATOR LIPMAN: Thank you very much.

ASSEMBLYMAN CHARLES: Thank you, Mr. Harris. We appreciate your testimony.

SENATOR LIPMAN: Mr. Harris, do you have a copy of your statement for us?

MR. HARRIS: I will have the statement retyped and delivered to you by the end of the hearing.

SENATOR LIPMAN: All right, thank you, because some of your suggestions were very interesting.

Mayor Gibson, of the City of Newark, is being represented by Ms. Shirley Rutherford.

SHIRLEY RUTHERFORD: Thank you, Senator Lipman.

SENATOR LIPMAN: Do you have copies of your statement?

MS. RUTHERFORD: Yes. In fact, I sent you a copy, but I will leave you another copy.



SENATOR LIPMAN: I know, I have it, but I meant for our stenographer.

MS. RUTHERFORD: Okay, fine. Senator Lipman, Assemblyman Charles, Assemblyman Zimmer: My name is Shirley Rutherford; I am the Executive Director of the Human Rights Commission of the City of Newark. On behalf of Mayor Kenneth A. Gibson of Newark, and of the members of the Commission, I am speaking to support the aims and purposes of Senate Bill 544, and, especially, to commend Senator Lipman for the outstanding leadership role she has played in addressing the needs of the minority business community in its struggle to overcome the obstacles posed by economic disadvantage and institutional racism, in order for them to take their place in the mainstream of business in our State, with both the public and private sectors.

It is fitting and appropriate that State government take a leading role in correcting past inequities, setting a positive example, providing the necessary assistance, and directing the course of events toward the achieving of a more equitable distribution of opportunities to compete in the economic arena.

Legislation, with proper and adequate enforcement, has historically been an effective tool in changing behavior, and eventually attitudes, in inter-group relations in our country. For example, Title VII and Title VIII of the Civil Rights Act resulted in far-reaching changes in housing and employment patterns throughout the nation.

The City of Newark, in 1975, enacted an ordinance which established goals for minority business in construction projects, including private-sector developments which received tax abatement or other considerations from the City. As in proposed Senate Bill 544, the goals can be satisfied through either direct prime contracts, or through subcontracts. Through vigorous monitoring and enforcement, and cooperation between public and private entities, Newark has achieved its MBE goal in construction, and is in the process of extending this policy for nonconstruction contracts, that is, for the purpose of goods and services. Our experience has shown that such a program can be made to work.



We are pleased that the drafted legislation provides for set-asides for minority business. The language of this section needs some clarification, though, to assure that an adequate portion of the set-aside be for businesses owned by minority group members, as distinguished from businesses owned by women, since we note that the bill defines a minority business enterprise as one owned by minorities or women. Incidentally, the Department of Labor does not classify women as minorities; our ordinance in Newark does not classify women as minorities, although we do recognize them as a protected class. We feel that the set-aside provision will be essential to meeting the goals of the minority business program. The City of Newark, in fact -- as was raised by Councilman Tucker before me -- would like to see legislation go a step further, and enable a municipality, such as Newark, to incorporate minority set-aside provisions in its own procedures for the purchase of goods and services. We are not able to do that under the existing law. I would also like to support Councilman Tucker's discussion concerning the inclusion of Portuguese of European origin as minorities. In Federal legislation, and in our local legislation, we do not include people of European origin as minorities.

The provision of technical assistance and business expertise, if adequately funded, is a very important element of this legislation.

Our experience in Newark with the Affirmative Action Program for Construction has shown that small business enterprises, which include most minority-owned businesses, find it difficult to compete with larger-volume businesses, partly because they have proportionately higher costs for such technical, managerial, and financial activities as estimating, bonding, credit lines, bidding, and record keeping. Access to resources in these areas, and development of skills, can go a long way toward making a business enterprise viable. The loan and investment guarantee provisions are also of vital importance, since the reluctance of financial institutions to provide the capital necessary for growth has been a major factor in holding back the development of minority businesses.



To a large degree, the success of the programs proposed by this bill will depend on the experience, understanding, and sensitivity of the people appointed to the Minority Business Development Authority, which is given broad powers under this legislation. Incidentally, we know that a Minority Business Advisory Committee, recently appointed by the Governor, did not include anyone from Newark. Not only is Newark the largest city, and the home of the largest minority population in the State, but we have had a number of years' experience in implementing a minority business development program. It is hoped that these factors will be considered in the selection process, and that the State will avail itself of the knowledge and experience gained by those persons in Newark who have been involved in the expansion of minority business opportunities.

I am not going to take too much time, because I know that some things would be repetitious of what others have said. I just want to thank the members of this Joint Committee for your time and attention.

SENATOR LIPMAN: Ms. Rutherford, thank you very much for expressing the sentiments of the Mayor of the City I represent. The Legislature did not appoint the Minority Business Advisory Committee.

MS. RUTHERFORD: I understand that, but it was at least an opportunity to make the point -- the observation.

SENATOR LIPMAN: I just wanted to clarify that.

MS. RUTHERFORD: It was just an observation.

SENATOR LIPMAN: It was the Governor who appointed the Minority Business Advisory Committee. All right, thank you very much for coming today.

Now, we have -- I'll have to announce these -- Ms. Braley, Mr. Hurt, someone from the Department of the Treasury, and a businessman who has to give testimony on the other side of the State House. Which one of you wishes to speak first?

ASSEMBLYMAN CHARLES: I am going to remind the speakers now of the three to five-minute time limitation. You just use your good judgment and your sense of fairness.

SENATOR LIPMAN: We'll hear from Ms. Braley now.

GRACE BRALEY: I am Grace Braley; I work for the Presbyterian Church in the tri-state metropolitan area. I wish there were time to give you



some of my personal background, which makes me feel very strongly the desire to endorse this piece of legislation. There isn't time for that, but perhaps it will come through in terms of what I am going to say.

I do not feel there should be any need to argue for whether the State will pass this legislation, but why haven't they done it already, and how quickly can they get it implemented? With the history we have, we know that changes such as racial justice just simply do not take place without considerably more overt action than our society tends to want to put forth. However, my appeal will really be to why the bill should be moved.

In New Jersey, in the last few years, 82,000 industrial jobs have been lost as plants have closed. Of course, there is before the Senate, also, a Job Retention Act, which relates to that. Minorities and women have endured a greater share of the costs of economic dislocation, while receiving fewer of the benefits, according to a study by the Wisconsin Advisory Committee to the United States Commission on Civil Rights. President Reagan addressed Congress on the Economic Recovery Program, saying, "It is essential to make America competitive once again in the world market." The special Business Week issue, Reindustrialization of America argues that the goals of special groups must wait for the United States to compete in world markets, or all are doomed to lower levels of living. They neglect to point out that we are all doomed if we deny minorities. If we use the backs of others for the gain of some, all dignity is taken away.

Community development corporations have demonstrated some success through programs designed to benefit the economic stability of entire communities, and they do not work from a supply side perspective. They do not depend solely on the attraction of private capital. They strive to balance public and private needs. The Civil Rights Report goes on to say, "Fundamental problems plaguing depressed areas are absent any public control over capital allocation, problems ultimately paid for from the public sector, as well as from lower-income individuals."



In terms of incomes for families in the United States -- and this has been alluded to by other people this morning -- family incomes have risen 138% from 1970 to 1981, and for Black families, 151%, but that brought all families to a median income of \$25,000, and it brought Black families to a median income of \$19,000. For female head-of-household persons, incomes rose 110% in the same period. Again, White women achieved a median figure of \$10,000, and Black women achieved a figure of \$7,000. For male head-of-household persons, the earnings achieved by White males was \$20,000, and the earnings achieved by Black males was \$14,000. Employment is generally considered the key to economic independence in our society, but it does not unlock the door for many women. According to the United States Commission on Civil Rights, more than 26% of Black, 23% of Hispanic, and 20% of White women are overeducated for their jobs.

I would like to quote from Arthur Fleming, who was dismissed as Chairman of that Commission several years ago, in an article in the New York Times: "If I have responsibility for operating a government agency, or for being president of a university -- and I have had both opportunities over my lifetime, I can say to those who are associated with me that I want the agency or the educational institution to become a model for equal opportunity for minorities and women. But, if that is all I do, nothing is going to happen. The President has made clear that he is opposed to affirmative action; so has the Attorney General. Unless people in public office indicate that they believe you must use affirmative action in order to achieve equal employment, it is just going to be rhetoric. Furthermore, by and large" -- and this is still Fleming speaking -- "those who have obtained positive results from affirmative action have gained great satisfaction from that, and have become very supportive." I think the State of New Jersey needs to be reminded of that in considering this.

Professor of Economics, Glenn Lowery, from the University of Michigan, comments on whether pay for minority workers is catching up, and puts out that that is premature because it ignores the fact that unemployment for non-White workers is twice what it is for their White counterparts. That is something we all know. Using longitudinal data,



several researchers have found that while the entry-level wages of young Black and White male workers of similar skills are now quite close, the subsequent rate of wage growth is significantly smaller for the Black workers. The core of the debate centers around whether special favor for the group discriminated against is a fair solution. Lowery suggests that not to take special action is to condemn those whose rights have historically been violated, and their progeny, to suffer indefinitely.

A much more strong statement is made -- and I want to read this because I think it really makes the point quite clearly -- by Philip Green, in an article in Christianity and Crisis: "Do all those corporate directors, bankers, etc., who got their jobs through extraneous reasons, first, because they were someone's son, second, because they were male, third, because they were Protestant, and, fourth, because they were White -- do they feel demeaned thereby? It would be interesting to ask them, or to ask the same question of those doctors who managed to get into good medical schools because there were quotas keeping out Jews, or skilled tradesmen who were admitted to the union because two members of their family recommended them, and so on." I think that argues for the fact that the State of New Jersey must take this step.

In the tri-state metropolitan area, in 1970, two-thirds of the region's Black families were confined to about 1.35% of the region's residential land. I think this is related, because the background of an individual's parents does influence achievement. The nature of the community to which a family belongs depends on the economic success of the parent. Less than 10% of all census tracts in the tri-state area were racially balanced in 1970, and had not changed by 1980.

Very quickly I want to say something about educational opportunity. It is tangential to this Act, and yet it really corroborates the need for it. My automobile mechanic decided to tell me all about it one day, saying that all kids have the same chance to try if they just want to, and I took him on. A child growing up in Newark in no way has equal education with a child growing up in Basking



Ridge or Madison. A child in Paterson -- and all but two census tracts in Paterson have more than 30% children -- has nowhere near the educational opportunity of the child in Ridgewood, and from an article in Prospective, the Civil Rights' quarterly: "Compare, for example, Newark with suburban Westfield, 15 miles distant. In Newark, inner-city students have been working with computers for over 15 years. The large high school in this system has 16 computers. But, in Westfield, a similarly-sized high school has twice as many terminals, and batteries of courses in computer science and data processing. Westfield will teach computer literacy to all sixth grade students, and in Ridgewood it starts in kindergarten.

As this State holds its minority population socially and economically captive in Camden, East Trenton, Newark, Paterson, etc., it assures that the next generation will still not have equal opportunity.

A New York Times article, just this past Sunday, reported on the Governor's commitment to revitalize cities, but the only development reported was a Newark office building near Penn Station. I have been working closely with a man named Bill Wallace in the South Ward of Newark, who has patiently persevered, often without pay, and is now getting 30,000 square feet of factory space renovated. I think it is that kind of perseverance that is an example for everyone else, but it needs an Act like this to back it up with technical assistance, guidance, loans, and the other elements of the Act.

I only want to say a couple of things about the Act. Specifically, it provides economic assistance, technical assistance, and a review process. Several years ago, I had occasion to work with a municipality on a community development project, and we followed all the Davis-Bacon and other procedures, which were cumbersome, but as I understood it, were to protect workers and minorities. We released the bid notices and sent specific letters to a list of some 20 minority contractors. There were no results. I asked that the entire first set of bids be thrown out -- I had several reasons for doing that -- and we did it all again. There were no minority bidders. Why? There are several reasons, but the one I would stress today is that the



overwhelming complexity of the whole government process discourages all business except the most sophisticated. They have usually learned the system too well, and are often in positions to make it work quite nicely for their economic sustenance. Let them be the volunteers in the South Ward of Newark and do the set-asides, so that some other people can get in on the opportunity. The technical assistance is essential, and the other piece to help make it less cumbersome.

There is one specific recommendation I want to make about the composition of the Authority. The four public members who shall be minority group members and shall hold a controlling interest in a minority business enterprise, need some protection, so that they too may bid on State contracts which come up. I don't know how you write the legislation, but that's your problem. I just -- as I read it -- was very concerned that they not have to exclude themselves from bidding and getting in on that opportunity.

I mentioned the technical assistance. The monitoring authority is a must, or else it is all words. The carefully thought-out plan is one which New Jersey can enact and in which it can take pride. If you hold people down, all society is diminished. If you better people's standard of living, the whole society benefits.

Thank you very much for the opportunity to say that.

SENATOR LIPMAN: Ms. Braley, before we proceed to Mr. Hurt, let me just try to answer you somewhat. I have to go back and get further classification, but some official recently ruled that persons who sit on boards such as this one, do not necessarily have a conflict of interest, except in voting for themselves directly. I think maybe we have to go back to the Attorney General for clarification; however, I think that is a recent ruling. This has been brought up before. Anyway, we will get it clarified.

MS. BRALEY: I would just hate to see them cut out of the bidding.

SENATOR LIPMAN: Yes, and not be able to get contracts. You're right. Thank you. Our next witness will be Mr. James Hurt.

**JAMES E. HURT, JR:** Madam Chairman, members of the Joint Committee, honored guests, and friends: I am here today to support the New Jersey



Minority Business Development Authority Act, Senate Bill 544, sponsored by State Senator Wynona Lipman. It is my understanding that this Act will provide financial and technical assistance to minority business.

My name is James E. Hurt, Jr.; I am the National President of the National Assembly of Black Church Organizations. Our National Chairmen are Reverend T. J. Jamison, of the National Baptist Convention U.S.A., and Bishop Frank Cummings, President-elect of the A.M.E. Church.

The Assembly represents eight national Black denominations and 16 national Black church organizations in 16 other denominations. The organization represents over 50,000 churches, over 65,000 ministers, and almost 20 million parishioners.

Our slogan is, "Organized Black Church People: Lifting As We Climb." Our purpose is to explore, affirm, and enhance the accomplishments, capabilities, and aspirations of Black people in the area of personal, educational, economical, and political development through divinely inspired, organized Black church people, aided by other concerned, dedicated Blacks. There is an explanation of this on the attached chart, which I will leave with you.

The primary objective is to help strengthen the influence of the Black church on the lives and fortunes of her constituents. Special emphasis is placed on the young people -- both churched and unchurched.

The serious times in which we are living call for serious attention. The church is the ideal agency to nurture the kind of individual and institutional stamina that is so desperately needed in today's fast-moving, materialistic, permissive society. True, in technological terms, change is the only constant today. However, in human terms, it is equally true that the more things change, the more they remain the same.

On April 4, 5, 6, 1984 -- the beginning of this month -- we held our first Assembly in New Orleans in the Superdome, where our guest speakers were Reverend T. J. Jamison, Minister Louis Farcon, and Reverend Jessie Jackson. As a part of our economic program, we announced we would develop one and a half million jobs for Blacks, by



Blacks, over the next three to five years. Important in this development is the New Jersey Minority Business Development Authority Act. Please bear with me as I develop our plan and the need for the Act. The following were the objectives of the Assembly:

1. To help enhance the spirit of creative ecumenism among Black church organizations, especially at the local church level;
2. To induce greater church participation and support on the part of the more privileged Blacks, especially young Black adults;
3. To advance the Who's Who Project with financial benefits to churches and church-sponsored schools, as well as its image benefits;
4. To launch other viable financial projects among receptive churches;
5. To encourage Black lay organizations via mutually-beneficial networking; and,
6. To put solidly in place the necessary supportive operational arrangements for Assembly goals and objectives.

The goals of the Assembly are to generate and stimulate confidence and commitment on the part of church organization heads, pastors, and members, towards a broad-scale, interdenominational effort to serve, more effectively and extensively, the personal, family, educational, economical, and political needs of youths, parents/guardians, other influences, and other adults.

I hope you will stay with me for a minute or two, for what I am saying now is a build-up to why I am here today. The muddy stream will become clear.

**What It Involves:** We perceive this to be an effort to affirm the relevance and power of the God-centered Black church.

**Who Is Involved:** First and foremost, this effort must include and benefit the members and potential members of the church. The church's basic mission is to serve the spiritual needs of its people.

The next most important element then, is the individual church -- its progress and its pastors and other leaders. Then come the denominational organizations, their staffs, and their leaders. Of



course, operationally and administratively, the order of priority would be exactly the reverse -- from denomination heads, to church leaders, to members. In addition to these forces, the program will also involve a church-oriented lay component in its leadership. Of course, there will be Black churches in America Publications, headed by myself with our staff, and I know from calls I have received from all over the country since the Assembly, that there is a large cadre of Black professionals whose services can be obtained on their appreciation for what the Black church has done for their lives, and can do for members of their communities. Why this program? The projected end results of this program, in logical order of priority, could be: spiritual growth; educational enhancement; economic development; and, political development.

I am here today to discuss the economic plan and why our program needs the New Jersey Minority Business Development Authority Act, that is, so we can carry out the economic program with the churches in New Jersey, with the help of the State in technical assistance, as well as financial assistance.

We introduced to the Assembly at the Superdome, a new eight-point economic program which will produce one and a half million jobs for Blacks, by Blacks, in the next three to five years. There are eight basic areas we are projecting: banking, insurance for the church, insurance for the individual, food, jewelry, cosmetics, caskets, and robes. The uniqueness of the program is, we start out with many positives because we have always heard negatives. We start out with: The greatest organizational structure in Black America, the Black church -- eight denominations, 16 Black organizations in other denominations, 50,000 churches, 65,000 ministers, and 20 million parishioners.

We have, as Black people, a \$200 billion income a year. If Black people in America were a nation, we would be the ninth richest nation in the free world. In the next five years, while we are projecting the one and a half million jobs, Black people in America will be spending one trillion dollars in income.



We have five years to change the way Black people think and buy. Our success will come when we train our mothers and fathers to spend their money in such a way that they make a future for their sons and their daughters, and stop spending their money in such a way that they make a future for everyone else's children except their own boys and girls, as they have for the last 200 years or more.

I am here to support the great need for the New Jersey Minority Business Development Authority Act. As the banking, insurance, food, jewelry, cosmetic, casket, and robe programs develop out of the churches in the State of New Jersey, there will be a very great need for services to the churches, to their members, and to others in the areas of financial and technical assistance. Now more than any other time in history, we need this Act passed. Attached to my statement, you will find supporting material.

In closing, I would like to say to you, Senator, that we are in negotiation with one of the businessmen in this community to franchise at least 50 chicken franchises in the State of New Jersey, and we will move that out of the State of New Jersey and across the country. The churches are going to be the base. They will be the originators of these franchises. We are also going to have at least 250 credit unions in the State of New Jersey, and we are going to need expertise and financial assistance of the sort proposed in the Act you are sponsoring. We are going to have food plans in at least 500 of the churches in the State of New Jersey, so we are going to need the technical assistance and the know-how. We are going to have jewelry setups within the churches; we are going to have cosmetic setups within the churches. Our research shows that we, as Black people, only develop and produce 2% of the caskets we are buried in, and we are going to have casket companies in New Jersey.

So, we are saying something a little different than what everyone else has been saying. Everyone else is relying on the State to help them. What we're saying is that we are going to bring business to New Jersey through the churches in the State of New Jersey, and we certainly need the help of your Act. We support Senate Bill 544, and any way we can get the churches in New Jersey behind you, just let us know.



SENATOR LIPMAN: I would like to thank Mr. Hurt for his inspiring speech; we appreciate it.

I would now like to introduce one of our new arrivals here. This is my colleague, Assemblyman Eugene Thompson, of Essex County.

FROM AUDIENCE: I would like to follow with my statement, because my statement is parellel to his.

SENATOR LIPMAN: I would like to honor that request, but I have a representative from the Department of the Treasury here who has been waiting for about two hours. I promise you will go right after Mr. Hamm. Okay?

FROM AUDIENCE: Okay.

SENATOR LIPMAN: Mr. Thomas Bush, Acting Director, Division of Purchase and Property, Department of the Treasury.

**THOMAS H. BUSH:** Thank you, Senator. This is the first of two days on which I will have the pleasure of your company. We will be at Essex County College tomorrow morning.

My name is Tom Bush. As mentioned, I am the Acting Director of the Division of Purchase and Property. I think it is important at the beginning that the Treasury Department's comments be placed in proper perspective. It should be understood that from our point of view, preferences in public contracting to further social and economic goals are a matter of executive and legislative policy. I think Mr. Blekicky, from the Department of Commerce, eloquently commented on the Administration's point of view in that regard, so we will not be commenting on that policy, but will be concentrating on a review of the administrative aspects of the law, and areas where we might suggest improvement.

I have given each of you, and you have available, a copy of the full text of my statement. In the interest of time, and other circumstances, I will highlight some of those comments and proceed to shorten my remarks.

As I mentioned before, the focus of our review is to seek assurance that the system of preferences is administratively workable, properly defined, and legally defensible, and that we will have sufficient flexibility within the Department of the Treasury,



particularly the Division of Purchase and Property, so as not to impede the legitimate needs of our using agencies.

At the same time, we should consider how this particular bill would meet those standards, and if it would do so in conjunction with similar legislation under consideration, or in the case of the small business set-aside already enacted.

The importance of coordinating the implementation and interpretation of various preference bills and laws cannot be underemphasized. Our foremost objective should be to achieve a workable integration of these bills and laws, and to incorporate overlap as a means to satisfy simultaneous provisions and goals.

Against this background, we would like to call your attention to a few areas where we believe this legislation could be improved. My comments are directed to four broad categories: the need for clarifications in the bill; legal conflicts we think may exist; the potential for delays; and, the enforcement provisions of the legislation. As I pointed out, in the interest of time, I will not read the entire statement, but will attempt to highlight some of the more important issues.

Regarding clarifications, in particular there is a need to clarify how this law will work in conjunction with the small business set-aside law. One problem comes immediately to mind, and that is the fact that this bill does not create any in-state preference, as does the small business set-aside law.

A second issue is whether it is the intent of the sponsor to permit set-asides created in S-544 to overlap with those of the small business set-aside law, that is, to use the same awards to minority enterprises to satisfy both their own goals and the small business set-aside goals. As we read the sponsor's intent, the set-asides would be at least 25% for minority enterprises. The set-aside for small businesses is 15%. Therefore, absent overlap, about 40% of State purchasing would be governed by set-asides.

Senate Bill 544 seems to provide that every contract must be set aside whenever there are at least three minority businesses on the list that could provide the product. We seek clarification if that is



the sponsor's intent. Further, the bill says an agency's performance will be compared with the State's aggregate performance, that is, the percentage of an agency's purchases from minority business enterprises will be measured against the State's percentages of such purchases.

The bill should explain whether the intent is to use the statewide average as an alternate minimum goal when, for example, that statewide average exceeds the 15% and 10% standards, or, possibly, when the statewide average is less than the 15% and 10% standards.

We see a need for clarification as well on enforcement against vendors supplying misinformation. We are not sure if this is the responsibility of the contracting agency or of the Authority.

Finally, we see a need for improvement in definitions, on Page 2, Section 3. Perhaps there should be a separate term to designate a business owned by women, or a broader term to refer to both categories. We see difficulty in referring to both businesses owned by minority group members and businesses owned by women as minority business enterprises, since this creates problems in interpreting other provisions. I think some of the other people who have testified have also pointed that out.

Regarding the legal area -- the second broad area of comment -- we believe there are potential conflicts between some provisions in this bill and the present contracting laws, as well as overlap of the functions of Treasury agencies and the Authority. For example, the Authority would pre-qualify bidders as to technical competence. This provision would seem to supersede a statutory provision which essentially permits the Division of Building and Construction to pre-qualify bidders for public works contracts, as well as similar laws applying to the Department of Transportation.

We must question whether it is necessary or beneficial to all parties concerned to establish two arenas of pre-qualification.

Here is a second example: The law changes the standard for the award of contracts. The award would be made to the lowest responsible bidder for the purpose of minority business set-asides. The present law allows awards which consider price, and other factors as well. We believe that consideration of factors beyond price is a



key ingredient of an effective purchasing system, and not incompatible with the sponsor's objectives.

We believe that there also exists a potential for delays in the purchasing process. For instance, the Authority is required to vote on every deletion of a business from the qualification list. The method of de-designating a purchase as a set-aside also has the potential of delay. Parenthetically, I would like to point out the difficulty of implementing the judgment as to when a price is unreasonable, as there is no effective way to do so without first soliciting bids from all vendors. In addition, this section should be made consistent with the present law, where judgments are not dependent on price alone.

The issue of qualifications could be difficult. Although a vendor may, in general terms, be qualified to submit a bid, it is by no means assured that he will be qualified for any particular award; that will be one of the issues in a bid evaluation. In fact, it is the type of issue which we resolve in administrative hearings when a vendor protests.

These provisions could lead to a second layer of review in which the Authority determines whether a vendor is qualified, and, a third layer of review conducted by the State Treasurer. The bill seems to make the State Treasurer the arbiter of disputes between the Authority and any contracting agency, including independent agencies, authorities, and the like, with yet another avenue of the appeals process.

Lastly, in the enforcement area, with any set-aside or preference bill, the Legislature has a legitimate concern that the goals established in the bill be met. However, in some cases, the enforcement provisions seem to be extraordinarily strong and potentially counterproductive.

Under Subsection a., when an agency acting in bad faith fails to meet the goals for set-asides, the Authority may cancel a contract and order it to be set aside. Our lawyers advise us, preliminarily, that the provision stands a good chance of being invalidated in the courts.



We believe this might discourage non-minority business from dealing with the State at reasonable prices, for fear that their contracts may also be cancelled.

Another difficulty here is that it is not made clear how many contracts could be cancelled after a finding of bad faith, and how long this cancellation period would continue.

Subsection b. underscores the need for clarification of the degree to which this law would be absolute, which we raised earlier. Here, a category is established, as a penalty, in which qualified minority enterprises shall have an absolute first right. And yet, there might be an interpretation that every contract is to be set aside if there are three qualified businesses available.

Again, in the interest of time, I have summarized some of our review and raised issues, but have not referenced every detail. We would certainly like to offer this Committee our willingness to work with your staff, and the sponsor, on any refinements, or on any suggested amendments you may determine you require.

SENATOR LIPMAN: Thank you very much, Mr. Bush. I really would like to sit down and talk to you about the refinements in this bill, but some of them that you mentioned here have already been taken care of by implementation. They have been left out of Senate Bill 544. Some of the things which do not seem to be clear or answered, you have already implemented very well. In the case of the awarding of contracts to small businesses, you are grappling with that subject now with Chapter 482. I imagine that before this gets through the Legislature, you will have figured it all out.

Also, an in-state preference is very difficult to state. Certainly, minority business enterprises would rather be chosen, than to have outside business enterprises coming in, but there is a very fine line before you run into reciprocity from New York and Pennsylvania. There are certain statements which can be made, which do not challenge the reciprocity among these states, and which will still set up a sort of in-state preference. Do you agree with that?

MR. BUSH: I would like to qualify that. The point of my remark was that, currently, the small business set-aside legislation



does contain an in-state preference. We were merely commenting on the inconsistency between this bill and the small business legislation. They are grappling with that issue at the moment.

SENATOR LIPMAN: Well, if we didn't say it, we meant to say it; we thought we were saying "preference" for those who live in this State.

MR. BUSH: But, on the broader issue that you mentioned with regard to reciprocity, yes, those conditions do exist. But, assuming that they were taken into account and referenced in a small business set-aside, we believe there ought to be a consistency.

SENATOR LIPMAN: Also, I would just like to mention -- I won't hit each one of them, although they all need work, as you mentioned -- the 40% set-aside. If you add it all up-- I never think it is too much to ask for a greater percentage, because it is always going to be reduced in the process. Forty percent of all the State's business is improbable, but we would like a good goal percentage for minority business enterprises and women business enterprises.

I don't know if there is a term which is inclusive, because women do not want to be described as "minorities," since they are, indeed, a majority. They want to be described as women-owned businesses. We have said WBE's and MBE's. I don't know if that could be-- Perhaps some of the women who are going to speak a little later may be able to clarify this. There is also DBE, which I do not understand. Is that a classification for both -- disadvantaged business enterprises?

MR. BUSH: I am not certain.

SENATOR LIPMAN: There are WBE's, MBE's, DBE's, and so on. We are having a little trouble with that. However, I would like to sit down and discuss this, because you have made some very good points where probably the language could be classified more. Certainly, we do not want any delays in delivery of contracts. We want the sanctions and penalties enforced. All right?

MR. BUSH: At any time, we will certainly be prepared to offer that assistance.

SENATOR LIPMAN: Thank you so much. Assemblyman Charles?



ASSEMBLYMAN CHARLES: I have just one question. You may not feel like answering it, or you may not want to answer it. Do you have any thoughts about whether this Authority would function better if it were established within the Department of the Treasury, as opposed to the Department of Commerce and Economic Development?

MR. BUSH: I don't know if that is appropriate. You may, in fact, have asked me for a policy judgment, which I do not think it would be appropriate for me to make. I think we understand the Department of Commerce as the Administration's agent in furthering economic development for minority business enterprises, and I think I will confine my remarks to that statement of fact.

ASSEMBLYMAN CHARLES: All right; thank you.

SENATOR LIPMAN: Assemblyman Thompson, do you want to ask Mr. Bush anything?

ASSEMBLYMAN THOMPSON: Yes, I have one question. In the fourth paragraph on the last page, you mentioned that another difficulty here is that it is not made clear how many contracts could be cancelled after a finding of bad faith and how long this cancellation period would continue. It would seem to me that my response would be, it would be ad infinitum. If you found bad faith, you would automatically void the contract. I think every time this situation occurred, you would follow the same process.

MR. BUSH: I think what we were referring to there is the fact that we would have multiple cancellations on the basis of one problem. In the case of Department requirement procedures we have with other appeal processes, what criteria, or conditions, or period of time would prevail before a proper case, or a time period could be presented, and the vendor would, in fact, be again acceptable and eligible for bidding purposes?

ASSEMBLYMAN THOMPSON: Well, there are some things you could probably enumerate on with reference to conditions, but a good example of a person who is operating in bad faith -- in fact, we have some legislation to deal with this-- We anticipate that minorities will be used as fronts; other people will put up the bonding money, the material, etc., will stand in the background with a gentleman's



agreement, and will get the contract. This has happened in New York and in other jurisdictions. I don't think that the responsibility should be on the Senator in drafting this legislation, or that every anticipated problem has to be in the legislation. That is almost like overdrafting, and it is impossible. I think if it can be put in certain terms where it fits within the confines of the whole legal jurisdiction, it will work. You just have to deal with it, maybe, on an appellate level, or maybe with an Administrative Judge. I'm not sure, because this is in the embryonic stage.

MR. BUSH: Yes, I think a large amount of what you say is true. We were just trying to point out that perhaps there could be more specificity -- not to such detail as I understand you are trying to say -- which would help to better clarify the intent of the legislation.

ASSEMBLYMAN THOMPSON: Thank you.

SENATOR LIPMAN: All right. Thank you very much. We are looking forward to hearing you speak about procurement at Saturday's seminar, Mr. Bush.

MR. BUSH: Thank you very much.

SENATOR LIPMAN: The next witness will be Mr. Arnold Hamm, of the Oliver Brown Trucking Co., Inc.

REVEREND ARTHUR S. JONES: Senator, may I leave copies of my statement; I will not be able to stay.

SENATOR LIPMAN: We could get to you in pretty short order if you could stay.

REV. JONES: Mr. Hamm has a lot to say.

SENATOR LIPMAN: Everyone is only supposed to speak for six or seven minutes. That is as long as Mr. Hamm is going to speak.

REV. JONES: Well, where am I on the list?

SENATOR LIPMAN: Well, we sort of got confused on this list, but you can see that the room has cleared considerably.

REV. JONES: Maybe I ought to just try to wait. We are supporting this legislation, of course.

SENATOR LIPMAN: Thank you, Reverend Jones; thank you very much. That was Reverend Jones of the St. Mark's AME Church. We will



have Mr. Arnold Hamm of Oliver Brown Trucking, and then Mr. Carl Norman.

**ARNOLD K. HAMM:** Thank you very much, Senator Lipman. My name is Arnold Hamm. I am Vice President of the Oliver Brown Trucking Co., Inc., which is based in Middlesex, New Jersey. To give you just a little bit of background on myself, I have a college degree. In 1983, I was recognized by Outstanding Young Men of America and, also, my biography is included in the 1983-1984 edition of Who's Who in Finance and Industry. Currently, I also serve as Chairman of the Human Relations Commission in the City of Plainfield. However, today I speak from a business standpoint.

Oliver Brown Trucking Company, a Black-owned business, celebrated its twentieth anniversary during 1983, and holds Interstate Commerce Commission authority to haul general commodities freight in the continental United States. Although we possess the necessary certification, some major corporations have not been totally accessible so as to develop and initiate a working relationship. The transportation industry is unique in that we are generally required to compete against the major carriers. The problem is that small minority carriers -- such as the Oliver Brown Trucking Co., Inc. -- do not have flexibility in establishing a profit margin, the way major carriers do. There have been situations where our rates were deemed competitive; however, we were not awarded the work because of a long-standing relationship that the company had with the current carrier. In other instances, Oliver Brown Trucking has attempted to initiate a joint venture based on contacts made at various minority trade fairs. Unfortunately, the Fortune 500 companies cite our inability to match existing rate levels.

Currently, the opportunity of hauling shipments for the State of New Jersey is quite limited. On Department of Transportation projects, the general contractor subcontracts the materials out and the vendor is responsible for moving the freight. With respect to items procured by the Department of the Treasury, contracts are awarded based on a delivered price. As you can see, the current system precludes potential opportunities.



When discussing financing, all matters revolve around the banking institutions. Cautiousness on the part of bank officers always prevails when seeking assistance. Loans are always put together to suit the bank, which acts or reacts in a conservative manner. One prime example was the loan request presented to our alleged "friendly banker." Although unreasonable and unconscionable, the loan had to be secured with \$10.00 of collateral for every \$1.00 borrowed. Such a ratio is not common, to the best of our knowledge. I would add that initially, at some point, we were advised that not enough collateral was available, and in more recent months we were advised by the banking institutions that they are not in the real estate business, nor are they in the transportation business. Furthermore, we find difficulty in increasing our line of credit from \$100,000, although substantive documentation allows for more, and Oliver Brown Trucking has consistently requested more. Our revenue in the last fiscal year exceeded \$2 million. Some of the bank's actions acknowledge their philosophy that minority businesses are a risk.

I must also note that such attitudes do not exist only with banks; there are corporations that purport to help minority-owned businesses with capital investments. Their programs require an enormous amount of research, data, and reports. There are costs associated with the mandates, and you are not guaranteed anything for your investment. Lending people deal with loans, and do not necessarily understand the needs and concerns of minority businesses. Make no mistake, there is a different interpretation. If a minority-owned trucking company established in excess of 20 years ago has problems obtaining the financial assistance necessary, newer minority businesses encounter a greater abundance of resistance. Our stake is planted within the State of New Jersey. It is unfortunate that there are individuals who view our enterprise as a threat to their piece of the pie. We are consumers, and we understand that a pie can be proportionately or disproportionately divided. We do not seek star-studded fantasies; we merely seek our fair share. The issue of reciprocity has been highlighted by the media. It all boils down to the same thing. We look to operate with free hands, excluding the handcuffs. Defeats only make us stronger.



Senate Bill 544 seeks to address such an agenda. The New Jersey Minority Business Development Authority will provide a multitude of services. The area of guaranteeing and insuring loans made by private financial institutions is important. Considering the make-up of the Authority membership, a better dialogue can exist because a better understanding is in place. It is important that minority businesses have a chance to work with an entity committed to the goals and objectives articulated in this bill. We are not looking for handouts, merely those who willingly and voluntarily stretch their hands out to reach ours.

In conclusion, I wish to commend Senator Wynona Lipman for introducing this bill. Furthermore, I wish to commend this Committee for acknowledging such a necessity to the point where today's hearing was called. I trust that this bill has the support of all Committee members.

I thank you for this opportunity, and I pray that your insight will provide some light at the end of our tunnel. Thank you very much.

SENATOR LIPMAN: Thank you very much, Mr. Hamm. Do you have copies of your statement for us?

MR. HAMM: I will leave a copy with the stenographer.

SENATOR LIPMAN: Oh, all right. I promised Mr. Norman, who is Chairman of the Board of the MIS-ATSE Corporation, that he could be our next speaker. He has been waiting for a long time.

CARL V. J. NORMAN: Well, you know, I am impressed with what I have heard. This is my associate, Mr. Woody Miller, of Camelite Builders. It is an honor and a pleasure to address such a distinguished body.

We have heard all kinds of complaints and, you know, what we can do about this, that, and the other thing. For seven years, we have worked diligently on a program which we can certainly relate to all the testimony we have heard here today. For that reason, we will not be redundant, nor prolong these proceedings. I would just like to read a statement. Also, I would like to go on record as saying that I, Carl Norman, am the original author of the materials written for the Urban Industrial Enterprise Trade Zone. Through political bureaucracies,



both on the Democratic front and the Republican front, this effort was circumvented, and somehow or another, now they have a ball that they just can't handle. Right now, I am going to read the original Urban Enterprise Trade Zone proposal that was submitted, and this is just a brief summary.

In 1977, a group of professional businessmen and community organizations became frustrated with the deteriorating conditions in inner-city communities. The following information identifies a unique development venture which we feel is the answer to President Reagan's Employment Concept, compiled over a five-year period.

Background: When we say MIS, we are talking about the Manufacturers' International Syndicate. That is what MIS stands for. ATSE stands for Advanced Technology Systems Extended. The Manufacturers' International Syndicate was formed for the purpose of establishing diversified manufacturing facilities in inner-city communities, and to create employment through technology transfer. Through successful negotiations, \$38.5 million has been secured for the purpose of constructing a vertical industrial trade zone that will create approximately 20,000 jobs throughout the State of New Jersey.

This employment project is a pilot project. It will be implemented in 45 distressed urban cities throughout 18 states. The Urban Industrial Enterprise Trade Zone will create 840,000 jobs in 45 urban depressed cities for manufacturing and high technology projects.

Proposed Financing: The proposed financing will be arranged by the International Investment Syndicate. I would like to stop here, because the International Investment Syndicate-- We are members of International Middle East Associates, which is comprised of a group of businessmen from Saudi Arabia, throughout the Middle East, and Africa. As I said, the proposed financing will be arranged by the International Investment Syndicate. This syndicate represents 21 offshore private investors who have agreed to finance the developmental stages of the pilot project that consists of the following construction projects:

Housing Development: Under the pilot development project, a total of 691 units will be constructed to service the poor, the elderly, the handicapped, and middle and upper-class clientele, approximately 31,100 housing units nationwide.



Urban Enterprise Trade Zones: The combined efforts through the joint ventures of MIS-ATSE and the International Investment Syndicate will finance the construction of 550 business urban enterprise trade zones. These trade zones will create 55,000 small businesses nationwide, and 200,000 jobs.

Diversified Energy Projects: Advanced Technology Systems Extended has joint ventures with three engineering firms--

SENATOR LIPMAN: Excuse me, Mr. Norman. How does this get back to the development Authority we are discussing? You are giving us the national picture.

MR. NORMAN: Okay. What we would like to do at this point is-- We have heard from many minorities throughout the State, and we know the facts. I have in my pocket, right now, a \$100 million loan guarantee commitment that was approved in 1982. To give you a picture of what everyone on this side of the chair is going through, we went to the Broad Street National Bank and asked them to be the conservator over the account. As a result, they had to make contact with the Bank of Hong Kong, and the Bank of Hong Kong told them that they had to put up a bond. At that time, I said to my wife, "I want to show you how the system works." So, we went back down there. By this time, they had come up with all types of investments for the \$100 million we were supposed to borrow from the offshore lending institutions, and how they were going to put in a short-term loan situation -- Ginnie May, Fannie May, Freddie Mac, etc. As a result, when all the smoke cleared, the people from the Bank of Hong Kong, out of New York City, asked them if they could put up a bond to guarantee the money that would be coming through their system. However, they could not do that. As a result, we went back down to the Broad Street National Bank, and asked them, as a minority business enterprise, could we borrow \$40,000. The answer was a flat "no."

You know, it is a long drop from \$100 million to a \$40,000 loan request, but they had taken our money; they had pre-invested everything. Now, we have organized, but we have no political affiliation because we feel as though this has been our problem in the past. If a program is implemented by the Democratic Party -- if a program is established under that Party, no one wants--



ASSEMBLYMAN CHARLES: Excuse me. Senator Lipman asked you a very legitimate question -- please. We have a lot of people here. How does all this fit in? We have to deal with this subject; it is very important.

MR. NORMAN: I realize that, but if I could just elaborate. You know, we have heard a lot of wasted testimony. I have something here that is pertinent and relevant, not only to the bill, but to our communities. We are living in dying communities.

SENATOR LIPMAN: All right, Mr. Norman, proceed.

MR. NORMAN: Thank you. You see, we are looking for short-term answers to problems we have had for over 400 years. You're looking for a five-minute solution.

ASSEMBLYMAN CHARLES: No, we're not.

MR. NORMAN: Well, anyway, what we would like to do, as far as the bill is concerned, is to get our consulting staff, and our attorneys, to try to do a joint venture with the Authority, so we can make moneys available to the Authority from the private sector, because as you try to get money out of New Jersey, you're reaching for a pie in the sky, and the pie in the sky no longer exists. You don't even have hope anymore.

I'm telling you something that I know about. I deal with people on that level. Basically, what I am trying to tell you here now-- You're talking about legislation that may take two, three, four, five months to implement. I'm telling you, there are people out there who are hungry now. We need bonding; we need employment. As far as bonding and what not is concerned, you have an awful lot of contractors out there who bid on the roadwork for the Department of Transportation, but who cannot get bonding.

ASSEMBLYMAN THOMPSON: Excuse me. Let me mention something. Evidently, you do not understand the legislative process. If this lady, Senator Lipman, can get legislation as important as this is through in five months and signed into law by the Governor, then most people can wait five months. Do you understand that? I'm very serious.



MR. NORMAN: Understand my point. I understand what you are saying; now, you understand what I'm saying. Attorneys came in here, and you talked about the Civil Rights Act of 1964. You talked about the Civil Rights Acts of 1965 and 1968. Let's go back to the beginning of the Civil Rights Act. We have legislation on top of legislation. We have enough legislation to fill every office building that the State has, but you do not have one thing you can enforce that legislation with.

What I am trying to bring to Senator Lipman's attention -- and I appreciate everything she is doing -- is to give me what I need, not what you want me to have. That is the only thing I am saying. I'm trying to tell you what we need. I'm not worried about what anyone else needs. Everyone here is here for their own particular reasons. I am here to give you the facts. If you can't deal with that, then maybe I shouldn't be here.

SENATOR LIPMAN: Mr. Norman, do you need the Minority Business Economic Development Authority? Do you need it?

MR. NORMAN: Let me elaborate on that as well.

SENATOR LIPMAN: Just answer the question. You said to give you what you need. So, I'm asking you, do you need this bill?

MR. NORMAN: Yes, ma'am, we do need it. But, I'm saying that we need it with restrictions. I'm saying that there have been many, many programs. The Community Development Block Grant has been passed; the Urban Development Action Grant has been passed; but, when we get to the bottom line, the minorities do not get anything. So, you can take it as a joke, or whatever, but I'm telling you that we don't want it to come out so that once it is established, you forget what the real purpose is, and what the Authority was achieved for. That is the only thing I'm saying. There has been legislation on top of legislation. What you're doing is not the first time it has been done. In 1974, Congress passed an act for the banks to come out with the Community Reinvestment Act, and there is not a soul who enforces that. They thought they would ease the minority limit on borrowing when they came out with the Urban Development Action Grant. The only thing you need to do is get a committee to make the banks respond to that law. That is what I'm saying.



As far as the Authority you are trying to establish here now is concerned, certainly there is a need for it, but we do not want to have it get lost in the wind.

SENATOR LIPMAN: I understand.

ASSEMBLYMAN CHARLES: Mr. Norman, may I ask you to conclude your remarks, and get to a summary of what your point is?

MR. NORMAN: Well, I'm through, because, obviously--

SENATOR LIPMAN: (interrupting) Mr. Norman, I just want to tell you that you are right about legislation having been passed and put into law, and then never implemented. You are right that the need is still there. What I think we are all saying is, that is the reason we are here right now.

Did your associate want to say something?

MR. MILLER: No, thank you.

MR. NORMAN: Senator Lipman, let me tell you something. I had the courage to do something that Senators, Congressmen, or no one else would have the courage to do. I moved out of a plush, penthouse apartment on Park Avenue, and came down here and stayed at the Miller Homes, which is a dilapidated, deteriorating housing project, to find out what the people need. I'm telling everyone -- I'm making this statement now -- it may be a great big joke, and everyone is saying, "Go on, go on." That is the reason why Black people have never gotten anywhere, because we have always been rushed into various types of things, and we never understood what it was we were being rushed into. I certainly appreciate what you are doing, because we need more people like you three individuals who are up there now. The only thing I'm saying is, the real issues here have really been aborted. I have heard a lot of political speeches here; I have heard a lot of other speeches here. Do you understand? I am trying to deal with issues which are pertinent and relevant. I am trying to deal with the issues down in the valley, not those which sit on top of the mountain. There is no way possible that anyone but God himself can deal with, and analyze, a problem that sits in the valley, unless he is down there himself. I am trying to tell you that the people out there today need the help. We need more than just legislation; we need participation. We need



enforcement. If you are going to set up an Authority and say, "Well, here it is; come and get it," you know, it doesn't mean anything.

SENATOR LIPMAN: Your quarrel is with the enforcement of the law. Certainly, if we are able to get this legislation through, Mr. Norman, we will try to monitor it and see to it that it is enforced. There is a sunset provision here that we are going to take away, so we will have enough time to do that. That's a promise.

Thank you very much for coming today.

Assemblyman Zimmer had to leave; he has a meeting downstairs, but he will be back.

Our next witness will be Ms. Doris Fullerton of the New Jersey Association of Women Business Owners. You've been here a long time too, Ms. Fullerton.

**DORIS FULLERTON:** Senator Lipman, members of the Joint Committee, and fellow business owners: I am Doris Fullerton; I am President of Here To Help, Inc. We are the nation's largest medical claim assistance service. I have attended classes at Centenary College, the County College of Morris, the Career Academy in Milwaukee, and the George Washington University in Washington.

I am an active member of the New Jersey Association of Women Business Owners, the Morris County Chamber of Commerce, the Hackettstown Area Chamber of Commerce, the American Society for Training and Development, the National Association for Female Executives, and Zonta International.

I have received numerous letters of appreciation for the work of our firm from government officials, the Advisory Council on Social Security, the House Select Committee on Aging, and the Lions Club. I have also been listed in Who's Who in American Women, Who's Who in the East and, most recently, The World Who's Who of Women.

In September of 1983, I was honored with an appointment by Governor Kean as the Warren and Sussex County Coordinator for the first of President Reagan's Women's Business Ownership Conferences, held here in Somerset in October.

Prior to beginning my entrepreneurial career, I was office manager and, later, administrator for surgical and medical practices



for about 15 years. I was fully responsible for the daily operations of the business side of these practices, as well as for much of the clinical portion.

In 1977, I founded a consulting firm for physicians and dentists, using my practice management experience to benefit others. Dealing with the business side of numerous and varied practices clearly proved to me the need for the patient to have an advocate. All too many seriously ill and dying patients were having enormous difficulty handling the paperwork involved. The result: Their accounts were frequently turned over to a collection agency for moneys that really very easily could have been collected from their health insurance carriers. That is what we do. We help to make sure that people collect everything they are entitled to under their health insurance plans.

Here To Help's services have been offered for two and a half years now. It was begun with an idea, and a great personal investment of time and money. The test market -- which was quite successful -- was our story which appeared in Family Circle magazine. We were interviewed in February, 1982. At that point, we had been in operation for only six weeks. The results were individual clients throughout the United States -- not just here in New Jersey -- and even a retiree in Mexico, as well as hundreds of requests for franchises across the United States. We have built upon that response and have trained Health Benefits Coordinators from Connecticut to Oregon. We are now the largest medical claim assistance firm in the country, with our national headquarters right here in Morristown. And, we are owned and run by women.

The very first thing I did when I started my company was write down my business goals, and then develop a formal business plan detailing our controlled expansion. It is not easy for a novice entrepreneur to work out the details and implement such a plan. Persistence and knowing where to go in search of guidance, and to whom, made all the difference for me. Many great ideas never get off the ground because the entrepreneur does not know where to go for help. This is a major reason why it is so important to implement this bill;



the guidance, financial advice, resources, and opportunity to be made available through this bill are invaluable.

Here To Help contracts for services with attorneys, banks, small businesses, and individuals. We also deal with a lot of states. We have not pursued State contracts, although several State employees use our services. We have not discounted the possibility for some point in the future.

SBA loans to fund our expansion have been considered several times over the past two years. My husband and I invested our life savings in the Here To Help venture and, for many reasons, I decided not to finance the expansion personally. I chose, instead, to seek venture capital, and I am gratified with the result.

At an early point in our history, I was thrust into a totally foreign and confusing situation by an offer to buy my business. I did not know how to place a dollar value on a business idea. Where do you go to find out? It is really imperative that the business owner not lose control in a situation like this, or everything could be given away and lost. How do you negotiate the sale? What is reasonable when negotiating an employment contract in a situation like this, what are the usual perks, and on and on? Negotiations are critical. Help will be more readily available with the passing of this bill.

I am happy to see that the proposed bill is designed to utilize the strong capabilities and experience of all small business owners. The incentive to promote competitive growth, and in turn create more jobs, is exciting to me. This bill will present both opportunities and resources that might otherwise not be there.

I am concerned about the qualifications of firms seeking business set-aside contracts. It is very difficult to judge the potential of any small, viable business. Most small firms are undercapitalized. To handle a contract, an objective review of the management, technology available, and long-term financial abilities of each firm must be provided. I feel this statement should be limited to a certain number of pages, including cover sheet, budget, curriculum vitae, and attachments, to provide a quick-screen mechanism, to hold down the cost of statement preparation and the review process, and to



equalize the opportunity for all bidders. This statement should be reviewed by the Authority annually. Again, control is the key.

I have struggled repeatedly with new obstacles and have investigated numerous avenues to pursue in my business. The network of professional contacts I have developed is invaluable to me. The availability of those who have shared experiences, the same high level of energy, integrity, a willingness to listen, openness to new ideas, and the ability to handle people well, to make each person feel important -- fellow entrepreneurs, winners -- for minority and women business owners is essential to nurture the development of the heart of the nation's economy, the small business.

I strongly urge support of Senate Bill 544. Definite authority through legislation has been a long time coming, but will help make a difference in so many lives.

Thank you for the opportunity to be here today.

SENATOR LIPMAN: Thank you, Ms. Fullerton. Thank you, too, for waiting so long. You're from the New Jersey Association of Women Business Owners.

MS. FULLERTON: That's right.

SENATOR LIPMAN: Assemblyman Thompson, would you like to ask some questions?

ASSEMBLYMAN THOMPSON: No, I have no questions, Senator.

SENATOR LIPMAN: Assemblyman Charles?

ASSEMBLYMAN CHARLES: No questions, thank you.

SENATOR LIPMAN: All right. Ms. Fullerton, thank you very much for coming today. May we now have Mr. Donald Wilson from the Urban Business Coalition?

DONALD WILSON: I am Donald Wilson. I wish to thank Senator Lipman, and her colleagues on this Joint Committee, for giving the Urban Business Coalition a chance to give support and testimony on behalf of Senate Bill 544, which concerns technical assistance, capital formation, and advocacy of small minority businesses. The U.B.C. is an ad hoc group of minority construction contractors, small business owners, and professional and community leaders who are united in an effort to create economic development and employment opportunities for



our communities. We interact with State and local government officials.

The Urban Business Coalition feels New Jersey is least effective in contract monitoring and compliance development. We would like to move the minority business community into the mainstream of this nation's economy. We applaud the efforts of Senator Lipman in introducing Senate Bill 544, her success with Senate Bill 866, and the many other areas of small and minority business programs she spearheads on our behalf, but the Minority Business Development Authority Act must go further. There must be an independent agency with effective enforcement powers to monitor the compliance of contracts given to contractors and vendors who must meet equal opportunity requirements, as well as contracts developed for minority businesses. Some of the following reasons should make it clear as to why this agency is necessary:

(1) Bid rigging by local government officials: If you are from Hudson County, you know what this is about. It is in the newspapers constantly, Kelly's Corner, and the Jersey Journal, the leading paper in Hudson County.

(2) Back room designation of developers for major projects: All of this can be confirmed by our local paper, which is one of the leading papers in the State. In Kelly's Corner, their own people tell on themselves what they are actually doing to us. So, it is essential that this bill go forward, Senator, because the bill will make everyone aware of the areas where they are hurting us the most. You know, with bid rigging, they can stop us at the door, before we even get to the contract. They stop us because they have already made the deal concerning who the developer is going to be.

(3) Poor rate of minority business development even with present laws, such as Public Law 95-507: Executive Order 12432 requires Federal agencies to promote minority business enterprise participation in their programs. As the last gentleman just said, we need this law, but we also need something to make people comply with the law. This is very important; this is what hurts us. We get the law on the books, but it is never enforced. We know, from you and from



the different seminars you have held in the Newark area, and here in the Senate, that you are very much interested in helping us, but we need compliance.

We wrote a letter to Governor Kean, which said: "Governor, there can be no waterfront or community development if situations such as the high crime rate, the interest rate, and the unemployment rate are allowed to continue. There will only be the development of social disturbance among very frustrated people." When we talk about waterfront development -- some people are not from Hudson County -- we mean the multi-million dollar projects going on there. These projects would mean construction jobs for a great many people. This bill is very important to us in Hudson County, because it would give us more gunpowder to fight these people with. It is really hard. If anyone knows anything about Hudson County, you need gunpowder and a nuclear bomb to destroy what is there, because it is hard.

SENATOR LIPMAN: Mr. Wilson, we Senators usually consider Hudson County as outside our limits. (laughter) However, we will try to make this bill apply to Hudson County, since it is in our State.

MR. WILSON: I see that we have one of our number one people from Hudson County sitting on the panel. It is interesting, because in the past--

ASSEMBLYMAN CHARLES: You're not going to direct the nuclear bomb at me, are you?

MR. WILSON: Oh, no. I'm just saying that in order to break up the organization, and get our people to work-- Our main thing is to put our people to work to keep them from becoming overly frustrated. This is very important. The other counties have a strong machine, but they haven't seen the likes of Hudson County yet.

SENATOR LIPMAN: I agree.

MR. WILSON: Every time you look around, there is a probe going on, all the way back. In summation, and I'll make this very brief, part of what we are asking for, along with this bill-- We feel we must have an independent agency that will monitor this industry regarding affirmative action guidelines and equal opportunity regulations that are already law, but which have not been enforced.



An independent agency would be instrumental in monitoring the compliance end of the contract. This could be accomplished, if we stood up to our commitments to the law and to God. Commitment is making an effort to do your job as a leader. We must stay in touch with the changes going on around us. Commitment is the key to making our State, home, and business what we want them to be. Many commitments require thoughtful protection. We of the Urban Business Coalition understand these principles and accept our responsibility to provide any kind of help possible to those who make commitments and keep them.

One last thing I will say in parting is, I believe in right because without it, there is the absence of God. I believe in God because without Him, there is the absence of love. I believe in love because without it, there is the absence of you. I believe in you because without you, there is the absence of me. In other words, what I am trying to say here is, without you pushing for us, Senator, we wouldn't have a chance in hell. We are coming to the end of this hearing now, and we can see who is still here representing us, and trying to get the job done for us. So, on behalf of the Urban Business Coalition, I thank you, Senator, and Assemblymen.

ASSEMBLYMAN CHARLES: I would like to thank Mr. Don Wilson for coming down to present his remarks. I'm sure he has represented, quite accurately, the viewpoint of many in our district and in our county. I would say it is through Donald's efforts that some of the improvements that are taking place, are taking place. It is through the efforts of people like Donald Wilson, and I thank you for coming down to support Senator Lipman's legislation.

SENATOR LIPMAN: I thank you, too, for all the kind remarks you made about this legislation and past legislation. I appreciate your assistance.

MR. WILSON: Thank you kindly.

ASSEMBLYMAN THOMPSON: Mr. Wilson, I have just a few remarks. I think the amendment you mentioned is important. I think we should take that under consideration, if it is feasible to let an independent agency do oversight. In many instances, if the Legislature



itself puts something in the legislation, they automatically have oversight. But, I see a problem with that when you are talking about something this important. You may have to have someone who specializes in this area who can give it more time, and provide some type of enforcement.

The other thing I think may be a possibility in this legislation -- which was brought up earlier -- is taking something under consideration that will achieve a tighter appellate process when you have questions that arise in case of fraud, and things like that; for example, when someone operating under the guise of a minority business, who is not of a minority, is really running the business; or, a woman, where you find out it was the husband who put up all the money, and her name is just up there in the front.

MR. WILSON: That is the very reason why we asked for a compliance section, because we, as contractors, have found out that in numerous instances, people do put up a front man for the job, and all he does is collect a salary. He knocks us out of the box because he can put up the bond, he can put up the seed money to run the job, whatever he needs, just running it through a third party. It hurts us. So, we need a compliance section where we can have people such as ourselves, who we know will be dedicated to weeding out these types of individuals so we can have an effective affirmative action program here in our State. Any other way would be a farce; we would be fooling ourselves. We must have it. I'm quite sure that one of the things the people from the Brain Trust have been talking about in the past is some form of compliance. It should be one of the major parts of this legislation, even if it has to be an ad hoc group, or a nonprofit group which could be sponsored by the Committee, or something. Something has to be done to make sure that we have a compliance section, because the government is not going to do it for us. Thank you.

ASSEMBLYMAN CHARLES: Right. Thank you, Mr. Wilson. Next, we will call on Ms. Irene Smith. Is Irene Smith here? (no response) Ms. Smith is not here apparently, so we will call Mr. Harding Dunlop.

**HARDING DUNLOP:** Senator Lipman and able members of the Committee: My name is Harding Dunlop. I am Director of the NAACP Urban Program. I am here representing our State President, Irene Hill-Smith.



We come as America's oldest, largest, most feared, and sometimes, most loved civil rights' organization. We feel it would have been inappropriate for this session to be held and us not come to lend our voice of support. We are totally and unequivocally in support of Senate Bill 544, as introduced by Senator Wynona Lipman. We believe it parallels our new thrust in the State of New Jersey.

My office is located in the City of East Orange. The New Jersey Urban Program was created to deal specifically with the tremendous and horrendous high unemployment rate within this State. We feel sincerely that one lever that can be used to fight these conditions is to strengthen our minority businesses. They are where the people are hurting the most. They are in our urban centers around the State, and they can employ and absorb, and make a dent. If they become viable institutions, they can make a great impact on the high unemployment rate. So, we commend Senator Lipman's efforts to get this bill on the books. We want her to know, and we want you to know, that we stand firmly behind it. If there is anything we can do -- all 35 of our branches, 14,000 of our people across the State -- please feel free to call upon us, and we will be at your side.

ASSEMBLYMAN CHARLES: Thank you very much, Mr. Dunlop. I see that the next person on our list is Ms. Ellen Werner, of Ellen Werner Personnel.

ELLEN WERNER: I, too, would like to say thank you for the invitation to speak before you. The words which have been said before me expressed a great many of the sentiments I came here to express. I really accepted the invitation more as a brainstorming opportunity, if you will, so that I could ask a few questions which I personally did not see clarified for myself.

First, I am Ellen Werner; I own Ellen Werner Personnel in Newark, New Jersey. I am in the same building where Senator Wynona Lipman has her offices, 50 Park Place. I have been in the agency business for 17 years, and all of those 17 years have been in Newark. I am dedicated to Newark; I would never leave the City of Newark. When I was fired from one agency in Newark, I was offered many, many positions outside of Newark, and I said, "No, I will not leave Newark."



I am also here on behalf of Women Entrepreneurs; I am the Vice President. Women Entrepreneurs is an association of women business owners. We are all women business owners, regardless of whether we are a minority or not. We are all minorities because we are women.

I was approached by a State agency to take care of some personnel needs the agency had. These needs would have necessitated my going to someone to train people on various word-processing machines. I know a woman business owner who I wanted to use so she could train these people for me to get the contract to service and place these people. Unfortunately, this woman could not be of service to me as quickly as I needed her, because she did not have the capital to buy the machines needed to do the training. So, while this bill is definitely a move in the right direction, I am questioning just how small are we talking about when we say "minority small businesses" or "women-owned small businesses?"

I have two people working for me in another area. One does technical work, and one does data processing. There are small businesses, and then there are small businesses. More businesses are small with 30 people or under, than are small with 30 to 100 employees, which might be able to scrape up the capital for an award that could be given to them. Yet, the person with the 30 employees or under would not benefit from this bill, because he or she would not have the finances to be able to go out to get the needed employees, possibly, because he or she would need more manufacturing, more services, more design, whatever it might be. I feel these people must be spoken for.

I am the Vice President of the Essex County Small Business Council, which is a division of the Newark Chamber of Commerce. The President there says I am the speaker for the underdog, and I feel that I am, because I find that most legislation, when designed, is designed in the general scope and, consequently, does not help people at the lower end of the spectrum. I'm wondering if there is some way that can be adjusted. I do not know how; I do not have a suggestion. As I say, I am here to ask questions.



I also see that in the State of New Jersey, minority businesses or women-owned businesses are not registered on a State level. Every organization has its listing. When the SBA is having a seminar -- and I am a speaker and lecturer for the SBA -- we all send in our lists. As often as these lists have been sent in to the State government -- or to the Federal government, for that matter -- never have they been coordinated so that when something is needed, we have a complete listing of minority and women-owned businesses. If the State were to approve, and this piece of legislation were to go through, I think it would enhance the people who know about this. How do we get information such as this to the minority business owner, to the woman business owner? I would suggest that possibly when a person registers a small business, the registration should go through on the State level, and be categorized, so that when the State needs paper clips, they know in their computer that there are 1,500 small businesses that sell paper clips and, also, of the 1,500, 10% have less than ten employees, and another 15% have less than 30 employees. That way you could define just how small a business we are talking about.

Now, on the Council I sit on in Essex County, we are all small businesses, and yet I sit with a man who, in my opinion, is not small business, because he has a factory and close to 150 employees. I would drown under that, if I had to compete with him on any level. It would be utterly impossible. So, I say, again, that I am here more to brainstorm and to present these things concerning registering small businesses.

I notice -- and this was brought up before -- that the set-aside for minority businesses and small businesses is 15%, and for women-owned businesses, 10%. My question is, not only is that 40%, but if we take those percentages and put them on a whole-year procurement program, won't small business be practically wiped out after five awards? That percentage would be used up.

SENATOR LIPMAN: That is a good question.

MS. WERNER: Let me say, it could be. I shouldn't say it would be. Fifteen percent of 1,000 is 150. If in one procurement you were doing construction, and in that construction you needed personnel,



textiles -- the whole gambit of whatever a small business would use on a construction site--

ASSEMBLYMAN THOMPSON: (interrupting) I do not think that is the way the formula goes. I will give you an example, at least the way I remember trying to implement the legislation which was just signed into law in January. I took a gentleman up to Martland, to the University Hospital of Medicine and Dentistry. From what I understand, the 15% was-- They have a very diversified operation. What I was looking at was not 15% of the business they do. This guy was in detergents. Fifteen percent of the millions of dollars of business they do in detergents -- the hospital has to run an operation of cleanliness at all times. That was what I was dealing with. If he had toilet paper, it would be 15% of that, not 15% of the whole thing. Sure, you could eat it up in the construction field. One guy could wipe that out.

MS. WERNER: I agree with what you are saying, sir. I don't know your name, but I do agree. This is not what 7a. says, at least my reading of it. I am not well-versed in reading legislation, but it says--

FROM AUDIENCE: (interrupting) Let's get the bill passed.

MS. WERNER: I beg your pardon?

FROM AUDIENCE: Let's get the bill passed first, and then we can take care of the other things.

MS. WERNER: Oh. Anyway, 7a. reads: "There is established the goal that contracting agencies set aside at least 15% of their total procurements for minority business." That is how I picked that up. Now, if it is on each assignment, or each award that is needed that that 15% will go to a minority business, and 10% to a woman-owned business, and then another 15% to small business, then you do have a problem if the minority woman has a small business. She can file a procurement application on everything that comes in. If she files as a small business, files as a minority business, and files in her woman status, it is going in three directions and, God bless her, she would have 40%. I have no qualm about that, but there may be some people who do. I do not have any qualm about that at all.



I would like to ask if there is a way we can register small businesses today, categorize them, and, also, put them in a line of how small small is? There is the New York/New Jersey Purchasing Council for minority purchasing, which is not that exorbitant, but is still a cross section. Of the minority business owners that I know, I would venture to tell you that less than 10% of them know about the New York/New Jersey Purchasing Council, where they can go to deal with big business. The amount of information that is out there for them is fascinating, but we are not getting it to them. I would like to know if there is a way we could get this information to them. They are filed by their State numbers; they have an identification number. I don't know why a flyer, or something like that, couldn't be sent out. I'm sure there is a reason. But, when we get our tax forms, why isn't there a flyer in there giving us a listing of what is about?

SENATOR LIPMAN: You just gave me a good idea.

MS. WERNER: You know, something. You know what I'm saying. The legislation is needed, but we have to have a way of getting the information out to people. That is something I thought I would bring to your attention. Thank you very much.

SENATOR LIPMAN: Thank you, Ms. Werner.

ASSEMBLYMAN CHARLES: Thank you very much.

ASSEMBLYMAN THOMPSON: I have one question. One of the issues you raised was that a minority business and a small business may not be synonymous in many instances.

MS. WERNER: No, I--

SENATOR LIPMAN: (interrupting) No, they are not synonymous.

MS. WERNER: I do not believe they are.

ASSEMBLYMAN THOMPSON: Okay.

SENATOR LIPMAN: We have a small business set-aside.

ASSEMBLYMAN THOMPSON: Yes, I know that.

MS. WERNER: Before I leave, I would like to thank Senator Wynona Lipman for putting women business owners into this piece of legislation. We do appreciate it.

SENATOR LIPMAN: Could I ignore women? (laughter)

ASSEMBLYMAN CHARLES: May we have The Reverend William Eichelberger?



**REVEREND WILLIAM L. EICHELBERGER:** Senator Lipman, and members of the Joint Committee: My name is William Eichelberger; and I am a Presbyterian clergyman employed by the Presbytery of West Jersey as a specialist in urban ministries. My base of operation is in Camden, New Jersey. I also come here as a member of the New Jersey United Minority Business Brain Trust, as its recorder.

I would like to approach this from a different perspective than some of the persons who have preceded me. I would like to come at this matter from a historical and moral direction, which I think is quite appropriate for what we are looking at here in this bill.

As I reflect on the brief history of the United States, I become vividly aware of some most interesting facts associated with the growth of this great nation. Let me take you back to 1520 A.D. to an incident on the Island of Hispaniola, i.e., Haiti. As observers from a different time frame, we view a most distressing event. The people who have colonized this island are engaged in a titanic battle with the Indians who are native to the beautiful land. The Spaniards are employing all the weapons of modern warfare of that particular era to fight the indigenous people who are fighting with spears, stones, and sticks. The Indians are being slaughtered.

An important question should probably arise to awareness in your minds at this time. Why are these people being brutalized in this manner? Well, the colonists are taking over the country, and want the indigenous people to do the heavy work on the plantations set up by the colonizers. The Indians refuse, and the Spaniards go to war against them to force them to work for nothing on land which had been taken from them.

One of the onlookers at this ghastly scene is The Right Reverend Bartolomo De Las Casas, the resident Bishop of the Roman Catholic Church. The good Bishop is greatly distressed over this sight. Shortly after this slaughter, he hurries back to Spain, by the fastest means possible, and shares his distress with the King and Queen of Spain. He appeals to the monarchs to prevent the reoccurrence of such brutal treatment of the natives of Haiti. The rulers of Spain comply with the request and subsequently issue a document, which later



becomes famous in European and New World history. The document is known as the Asiento. It gave permission for natives of Africa to be shipped from their shores to work the Spanish plantations in the New World. The indigenous people did not give their permission; the Spanish rulers did this.

This document, the Asiento, opened a Pandora's box of destructive ills which were released upon Black humanity. Across the years, the Spaniards sold the rights to different nations. Whoever held the Asiento had the right to steal Black men, women, and children from their native shores and force them into bondage in the New World for the rest of their natural lives. Many nations became involved in the lucrative practice of forcibly extracting people from their African roots and forcing them into a most abject form of slavery in the Americas. In North America, the form of bondage involved not only separating the people from their physical freedom, but consisted of efforts to strip them of a sense of their own humanity. Many laws, practices, stereotypes, and attitudes were developed to implement the dehumanization of Black people in the New World.

Black people were worked harder than beasts of burden during their first three and a half centuries in this land. Through their blood, sweat, and tears, and even their lives spent in wars against the enemies of this nation, this land has become a great nation through the labor and commitment of Black people. These same people who have been stripped of their labor with no return to them, have continued to be among the most loyal and believing Americans.

Periodically, the shakers, movers, and systems controllers have thrown crumbs of benefits to Black Americans. However, these crumbs have been totally inadequate. Nevertheless, many Americans from the majority community have felt that even these crumbs were too much. Others who were sympathetic to Black Americans suggested that the crumbs continue at a more moderate rate. Neither realized that their orientation indicated that business as usual was the appropriate way to deal with Black Americans. The style of maintaining Black Americans in poverty was just a little bit different.



I have come here today not to talk about the technical aspects of this legislation -- this proposed legislation -- because others who have much more skill in the analysis of this document have spoken before me. However, I come as one who has a humanitarian concern, and as one who has a great concern about the implementation of egalitarian justice for Black Americans who are residents of the State of New Jersey. My concern as a humanitarian incorporates other minority groups who have been stripped of their just rights and opportunities. Senate Bill 544 endeavors to take a giant step forward in addressing the aspect of the inequality that is structured in the very fabric of our society, and is reflected in the various agencies of government, as well as in the private sector.

The author of Senate Bill 544 speaks to the issue of egalitarian justice in an eloquent manner when she declares in the measure:

"The opportunity for full participation in our free enterprise system by minority group members and women is essential if social and economic justice for them is to be attained, and the functioning of our economy improved.

"The presence of viable minority enterprises will provide incentives for youth, as well as employment and business opportunities, all of which will strengthen and preserve their faith in our country's political and economic institutions and the philosophy of freedom on which those institutions are based."

My good friends, I trust that you, this afternoon and in the days to come -- you, the members of this Joint Committee -- will take the concerns and the thrust of this bill seriously, and recommend its passage by both houses of the Legislature, and eventual signing by the Governor. It should not be stripped of any of its potent features. If anything, it should be strengthened to make it as strong as humanly possible so that it may be a strong plank in the building of the new level of egalitarian justice in the great State of New Jersey. I thank you.

SENATOR LIPMAN: Thank you.

ASSEMBLYMAN CHARLES: Thank you for your remarks, Reverend. We intent to study this.



REV. EICHELBERGER: Thank you.

SENATOR LIPMAN: The Coalition of 100 Black Women will be represented by Rebecca White-Jones, who is the Chairwoman of the Economic Development Committee and a Member of the Board of Trustees.

REBECCA WHITE-JONES: I was all ready to say, "Good morning, Senator Lipman," but it is a little later than that now.

I am going to be very brief. I have paraphrased a lot of my presentation because of the time, and because there are so many other people waiting. In looking at the picture as a whole, society for the past 20 years has been instituting methods to correct the imbalances caused by racial and sexual discrimination. Of course, we have the Civil Rights Act, Title IV, Title VII, and Title IX, as well as the Equal Educational Opportunity Act, the Equal Employment Commission, and others. We've come a long way -- maybe not quite long enough -- since Plessey versus Ferguson and the ruling of separate but equal. Separate, of course, was never equal; we all know that. The result of this past discrimination and differential treatment against minorities and women has been financial. The old network -- and you know who that was -- established a system by which all wealth and power was controlled by one segment of our society. Now, that same establishment is complaining about the burden of supporting the rest of society. Their alternative is to cut back on the millions of dollars poured into social programs meant to give assistance to the less skilled, the less educated, and the poor. And then what -- after they cut back on the programs, then what?

According to the 1980 census, the average salary of a White male is \$21,000; for the Black male it is \$15,000. But, the lowest on the income scale, at \$11,000, is the Black woman. That means that if her average salary is \$11,000, some of them do not even make \$11,000.

Although Blacks compose only 11% of the United States population and 16.5% of all unemployed workers, they make up nearly 34% of the jobless in this country. White males during this period were only 5.6%. Hold those figures for a moment. Sixty-six percent of all the women in this country work outside the home, either full-time or part-time. Two-thirds of those women are single, widowed, divorced,



or their husbands are disabled or make less than \$15,000. But those women, for the most part, are in the dead-ended, low-paying jobs, which contribute to the fact that of the people classified as poor in this country, 63% are women. Three point one million children make up 70% of the poor families maintained by Black women; 50% of the families maintained by poor Hispanic women; and, 39% of the families maintained by poor White women.

Poverty is a source of crime; you know that. Would the State rather spend money on unemployment, penal, and rehabilitation programs, or provide something as positive as this Authority? Minority entrepreneurs can make a significant contribution, if given the chance. This bill, S-544, will give that chance, by providing a means by which minorities and women won't have to rely on social programs or crime to stay alive, but will be able to stand up and become financially independent. Sure, we have had businesses which provide services and products to the community, but that was on a small basis. We have been purposely overlooked for major business enterprise.

The Small Business Administration provides some opportunities. We heard Deputy Commissioner Blekicky say that. But, when you look at the statistics, White women have benefited more than men and women of color. Because of the restrictive policies of the SBA, qualified minority businesses have been denied the loans they need so badly. The prejudices of our society are institutional. Therefore, nothing to date really addresses the real needs and concerns of minority businesses.

The major reason minority businesses cannot succeed is because they can't get the capital to establish themselves to even get started. In some cases, they also lack the resources and experience. This is new for many of us. Remember, we are not part of the old network. We do not have the experience and know-how to run a business in some cases. The Authority will act as a liaison between the State and minority business. This will ensure the State that a fair proportion of the procurement and set-aside contracts will go to businesses which are 51% owned by minorities. This liaison will also be established with the Department of the Treasury. The Authority will



act as an all-purpose resource center in assisting in the access to loans and grants, preparation of bids for contracts, accounting and management information, as well as technical assistance in reviewing pending legislation which affects minority businesses.

Another benefit of having the Authority is that a minority business will employ, hopefully, more minority persons, not exclusively, of course, but the chances are better for minority employment in a minority-owned business. The offices which might be established under the Authority would also provide jobs. Remember those unemployment statistics I gave you earlier?

No, the Authority will not be a panacea which will correct years of discrimination and biased treatment, but it is an attempt to break the cycle -- the cycle of lack of education and skills; lack of employment; lack of financial independence; and, reliance on social programs. This is one of those mechanisms that can break that cycle of hopelessness, by providing financial independence to those persons who have the skills and abilities to be successful, if given a chance and a little help.

There is an ancient saying, "Give me a fish and I will eat for one day. Teach me to fish and I will feed a family for many lifetimes to come."

We just wanted it on the record that the Coalition of 100 Black Women supports Senate Bill 544 and, of course, you, Senator Lipman. Thank you.

SENATOR LIPMAN: Thank you very much.

ASSEMBLYMAN THOMPSON: For the record, I would just like to address one issue you brought up which I think is very important, and that is crime relating to unemployment. In the State of New Jersey, we spend, on an accelerated basis now because of inflation, approximately, I would say, between \$22,000 and \$28,000 annually to keep an individual incarcerated. At one time, we averaged 8,000 to 9,000 adults incarcerated in penal institutions. That number has gone up. We are now moving at an accelerated rate, and 125 persons a month throughout the State of New Jersey are going through the criminal justice system toward incarceration in Trenton, Clinton, and the other major



institutions. I think that is very important, because that is a cycle that is devastating. I was at a press conference yesterday. Mohammed Ali was supposed to have shown up, but anyway, this conference dealt with the gentleman who is the head of the Boxing Commission. There are some movements in Trenton to try to get rid of him because he has been too successful. We are going to deal with that as another issue. When you get someone in a position and he succeeds-- They never contemplated that Atlantic City would be the major boxing capital of the world; even the casinos never planned for that. Anyway, we intend to stand behind this gentleman, and there will be some public hearings with reference to that situation.

I spoke at a gathering yesterday, and I stated -- and this beautiful gem was put together by a Black entrepreneur -- that I was not interested in any champion coming out of that gym. That is irrelevant as far as I am concerned. However, I think that gym can serve the purpose of taking some of the kids in the City of Newark, taking the hostility out of them, and teaching them discipline and respect so that they can do something to make it in this world. Otherwise, they will fall into the criminal justice system. Once they fall into that, it's about the end. You have to understand that we have kids who have never been in trouble, and they can't get jobs. The ones who have records are just eliminated from the whole system. Thank you.

MS. WHITE-JONES: Thank you.

SENATOR LIPMAN: Thank you very much, Ms. Rebecca White-Jones. The next speaker is right outside the door. He will be coming in any moment. (Mr. Lewis arrives.)

Mr. Lewis, I would just like to say thank you for bringing all the business people from the various counties here today. Although they probably couldn't all stay, I thank you anyway.

JOHN LEWIS: There are two gentlemen here; we had, I think, four or five. There is a gentleman here from Camden County, and one from Ocean County. We had two others here who left; they couldn't stay. So, I will speak on behalf of all of us.



My name is John Lewis. I represent the Ocean County Minority Business Alliance. We are concerned about this bill. It was quite interesting today to hear the different comments, because it helped to enlarge my thoughts, and I'm sure your thoughts were enlarged and broadened also.

SENATOR LIPMAN: Oh, yes. My head is bursting.

MR. LEWIS: I had to rewrite my whole statement, so I have to collect my thoughts to bring it down to about a minute and a half. We support the bill, naturally. It was brought up that the bill should have a means to ensure that the administrators comply with the law in it. I think that is most important, because we have this problem. I know of excellent laws on the books which have been flatly denied. Mr. Bleckicki, from the Department of Commerce, mentioned what is being done. I would like to respect what he said, but I would like the record to show that I have positive proof of a gentleman who approached EDA, who had prepared with great diligence for a project in Ocean County. It was singular in importance, and would have been quite lucrative to him. After going through the whole procedure, one of the representatives of EDA flatly denied him without even giving him an answer. He flatly said, "We are just not going to do it," with no excuse. We can supply you with proof. If you challenge me to, I will gladly get date, time, and paper, and the gentleman to testify to that effect.

ASSEMBLYMAN THOMPSON: Would you send it to the Chairwoman when you get that information?

MR. LEWIS: I would be glad to do it, and the gentleman will testify. This bill is needed. I am speaking because I want the record to go -- as I trust it will -- to the full Committee. I don't know what the next step is from here after you go back, but I'm sure you are going to hash it over. What is the next step?

ASSEMBLYMAN THOMPSON: Well, there is an amendment process, and a lot of other things.

MR. LEWIS: Okay. It's a sort of a minute process.

SENATOR LIPMAN: Well, we will put in some of the amendments which have been suggested today. Then, we will hear it in the State



Government Committee, which hopefully will be within the next week or two. Then we will put it before the Senate. That is the procedure. I will be sure that everyone is invited back to testify before the Committee on how much you would like to have this bill when we put it up. That would be maybe about the second week in May.

MR. LEWIS: Okay, that sounds good. Now, I am encouraging everyone here who is left-- I went out with a lot of letters, a lot of communications, and I spent a lot of money on telephones, trying to get the word out. We felt that even if we got a 5% response -- and I did receive about a 5% response -- that would still be good, because we're selling something. The concerned ones will kindle the flame for the others.

We are looking at supporting all of you -- I am assuming that you would not be here if you were not for this bill -- with political action and votes. We are out registering people like mad. We are going to bring this back to Ocean County. I hope that it gets publicized; I just wish we had a trumpet. We would blast it every way we could to get the word out.

On the other hand, I would like to bring up that we are quite weary. I think I am expressing the opinion of many people. We are weary. Some took note that -- as Reverend Eichelberger stated -- in a sense, we are kind of begging for crumbs. The Statue of Liberty is being refurbished now. It states, "Give me your poor." We give honor to the spirit of this country, and we know the spirit of this country is great, but we look at what the reality is. The people here now for which this bill has been prepared-- So many millions of people came under that Statue to this country, looking up in awe, but they never had to endure what we had to endure. Here we are, fighting for what they got long ago, and our fathers went to work for them. I want the record to show this, and I hope that the full Senate will read it, or hear it. That is why I'm saying this; I want it to be known.

ASSEMBLYMAN THOMPSON: As an addendum to that, you have to remember that the Statue came from Europe, and it faces Europe, not Africa. We understand that.



MR. LEWIS: Okay, thank you for that; thank you very much. I have my last little daughter in elementary school. If someone comes to the school and says, "Will you collect money for the Statue of Liberty," we will certainly give money for the Statue of Liberty. But, I am going to qualify that, and tell my daughter the true story. I am going to tell her, "You take your dimes and your little quarters; I'll give them to you, and help you to get them. You can march, too, to raise money to refurbish the Statue of Liberty."

Okay, so much for that. I wanted the record to show that part. Now, the next thing is, I trust the Committee will be unanimous. I hope the Committee will not have any recalcitrant members who, for other reasons, could not care less. I would like the record to show that, essentially, you have us here begging for crumbs. This is a crime; it is an absolute crime. Next, I would like to state that in these times we are living in, you cannot -- if you will allow me to use certain cowboy language -- put your grip around a man's neck and hold him down for 300 years, and then fight internal and external battles overseas and elsewhere, where people are saying, "Yankee go home." You can't keep a grip on me, and then ask me to fight your battles too because you need me. It is as Reverend Lowery of the Southern Christian Leadership said, "We all came on different boats, but we are in the same boat now."

What I am saying to the Legislature, to the full Legislature, and to this Committee -- all members of the Committee present, and those not present-- Hopefully, this bill will go for a full vote. At that point, Senator Connors, Senator Russo, Assemblyman Doyle, Assemblywoman Ford, Assemblyman Hendrickson, Assemblyman Rod -- all of Ocean County -- will have a chance to vote. Of course, we are concerned about Gloucester County and Camden County; we are concerned about all the counties. We have a list of the counties, and we visited some. We intend to get to all of them.

When the legislators have the opportunity to make a decision, I hope they don't think they are doing us a big favor. I thank the Governor for sending the gentleman from the Department of Commerce, and I thank him for his comments. They seem to put quite a few questions



to the legalities of the bill. I think it was Earl Warren who, during the 1960's -- when he was, as I call it, "the Abe Lincoln of the Supreme Court" -- asked the judges, when they argued against civil rights, "Yes, but is it fair?" So, the question is, is it fair? Why bicker and dicker over little legalities, picking the thing apart? Suppose you had invested money in 1777? Suppose you had bought \$10.00 worth of bonds, if the United States issued bonds in 1777? Essentially, 300 years later, or rather 200 years later, the bonds would be worth a great deal of money. Naturally, when you go to turn the bonds in, you would redeem them for the full amount of interest that accrued from those bonds. If you put into it, you expect to get out of it. How is it that we who put blood, sweat, and tears into the foundation of this country, now have to dicker, and come and beg, and cry and moan, just for what the immigrants who came to this country received without any problem at all?

I don't mind being a business person and having normal problems, but I have to bear abnormal problems because of the color of my skin. It might be better, perhaps, if certain segments of our society did not have their optic abilities. That way, they wouldn't have a problem, and they wouldn't make a problem for me. But, unfortunately, we are in a society where people do see, so we have to deal with it. I am asking all the legislators, and I am asking you to convey my message for the benefit of the Ocean County Minority Business Alliance. I hope we can get one in every county to complement the New Jersey United Minority Business Brain Trust, so that they will have an effective network. You cannot do too much without us. The more votes we can get for you, the more people concerned-- We are looking at votes. We feel that the bottom line is getting people out to exercise their right to vote.

This gentleman here is Mr. Odum; he is a dear man from Camden County. He is a unique Black businessman. He and his wife are builders; they actually build developments. He doesn't physically do it; he has done it, but now he directs his operations. He knows how to schedule, how to order, and how to set up a development. He is in the Pinelands. He came to me at your meeting about four months ago -- the



monthly meeting -- and told me that he had a problem in the Pinelands because the Pineland Commission said he had to have five acres. He had bought up some lots. He owns quite a bit of property, as I do. He is a builder. Builders buy property to build houses on -- low-income houses.

I told him the Pineland Commission must comply with the law, and the law is that they must provide each region a fair share of reasonable housing for low and moderate-income people. I told him to go back, because they can't do that. What happened was, the Commissioner went to the Attorney General for a ruling, which was hypocrisy, because the Pineland Commission is not exempt from the law. The Supreme Court clearly dictated this in Mount Laurel II. There is no question about it. Why go to the Attorney General for a ruling? The Attorney General did come back and say, "Yes, Mr. Pineland, you do have to comply. You cannot have exclusionary zoning, estate zoning, quarter-acre lots, half-acre lots, five-acre lots, and so forth." The whole thing is really an exclusionary zoning question.

This gentleman here, who suffered tremendously, is tottering, but we are hoping that he will stand. We will do whatever we can to try to help him. I have land; I am interested in building, and I am aware of the Pinelands. We have modular homes we want to put up. We have land available for modular homes. There is \$2 million right now which has been given to Ocean County for what they call the "Target Area," for low-income housing. They will build the roads, the curbs, and the sidewalks, called the infrastructure, and we just put up the modular homes. This man should know about that, and I would like to introduce him.

SENATOR LIPMAN: Thank you very much, Mr. Lewis, for that presentation. Assemblyman Thompson?

ASSEMBLYMAN THOMPSON: I would like to make one response. I think you brought up a good point. I'm from Essex County, but I follow the results of elections in Ocean County, and other counties throughout the State. I think that if you get together with your group, and petition the people who supposedly represent you in that County, they will vote correctly. I think that is important, because they have had



some tight races in Ocean County, and, but for the grace of Black participation in the political process, they would have lost, because Hazel Gluck won outright one year before she was appointed by the Governor. They do not have any grip on the party system down there. I think you should let them know that you are very interested in this legislation.

MR. LEWIS: Absolutely. We went to Senator Russo and Senator Connors, who represent both sides of the political spectrum. We gave them the same correspondence. Meanwhile, we are getting people registered like mad. I have young people out working right now. We're moving; we intend to build up momentum. We hope to get our own BLOC, which will make a difference. We have Jewish people, we have Irishmen, we have Hispanics, and we have Blacks. We intend to put them together, by the grace of God. If there are no more than 100 solid voters, it will still mean something. Thank you very much.

One more thing, this gentlemen here with me is from Ocean County.

SENATOR LIPMAN: He said he doesn't want to speak; we already asked him.

MR. LEWIS: He is into data processing, mailing labels and keypunching. He can make a thousand, a hundred thousand, or whatever. He has done State work, but he hasn't been successful yet. His name is Harold Williams.

SENATOR LIPMAN: We'll have to see what we can do about that. Mr. Williams, we really do not have your name on our speakers' list.

MR. WILLIAMS: Well, Mr. Lewis was going to speak, and everyone else here wants to speak. That is why I declined, so they could go ahead.

SENATOR LIPMAN: Mr. Lewis spoke on behalf of everyone. Thank you, Mr. Lewis. The next witness will be Mr. Horace Brown, who is from my neck of the woods. Wait just a minute, Mr. Brown. We just have four speakers left, I think, after Mr. Brown. That will be it. If you gentlemen insist, I will put the lady last, or I could put the lady first. Her name is Verice Mason, and she is from the Public



Advocate's office. (comment from audience) All right, we will go with our four, starting with Mr. Brown.

**HORACE BROWN:** I want to thank God first, for allowing me to be at this historical meeting. Also, I want to thank you, Senator Lipman, and your distinguished panel here for listening to us.

I have been in business for 21 years. I am in the business of office, institutional, and home furniture. I sell what we are sitting on, etc. I would call myself a pigeon flying with eagles. I am in the arena with Sears Roebuck, Gimbels, and J. C. Penney. I am selling the same items that they sell, buying from the same manufacturers, and so forth, so I listen to the same rhetoric, the same bidding process. I grew up to believe in the great American dream, that if you work hard, you know, like the commercial you see, where the stockbroker says, "We get it the old-fashioned way, by hard work"-- When I listen to him, I laugh, because if we Black folks haven't had hard work for the past 300 years or so, I don't know what hard work is.

I have also had the experience of really visualizing what this bill would mean to Black businessmen. I won't speak about all the other aspects involved, because I am not too interested. I am only interested in one area. I have sat in State purchasing departments on bids for hundreds of thousands of dollars. In my beginning years, I listened to how the lowest bidder would get the bid. I have submitted bids where I wasn't the lowest, and I walked away understanding that that was the way the system worked. I wasn't the lowest, so I would try to be the lowest the next time. I'm talking about hundreds of thousands of dollars -- millions of dollars. I have seen the lowest bidder receive a contract, and we all walked away as losers. Then I heard through channels that the lowest bidder did not get the bid, that the bid went to the fourteenth bidder on the list, maybe \$300,000 or \$400,000 higher. That destroyed all credibility, in my opinion, with the bidding procedure.

I sat down with people in the Purchasing Department in our good State here, who had no understanding of what they were doing. I have seen other dealers like myself setting up their game plans for the purchasing people who set up the rules. I attended a bidding process



on Thursday, right here, and they were talking about making a State bid for 18 months. They were talking about furniture, and a question came up from one of the dealers. He asked the purchasing people, "Suppose there is a State contract, and whoever wins the bid does not supply what they bid on?" The gentleman from the Purchasing Department said, "We will call him into the office and speak to him." So, what is the use of bidding? In other words, I could bid a Mercedes. What I am trying to say is, suppose they tell you to bid a Mercedes, so you bid a Mercedes. Then, another guy can come in later on and bid on a Volkswagen, and get the bid. Who is to know?

We need this bill. Black elected officials, we need this bill. We, Black business persons, can't even do business in our own back yards. I am asking you to go back to the others in the Senate and in the Assembly. Just give us 10%; you can have the 90%. That is all we are asking for in order to do business in the Black communities -- the Newarks, the Patersons, the Plainfields. It is disheartening when you go into the city where you were raised, you talk to purchasing people, and they tell you that you cannot bid, that you cannot become a part of the free enterprise system.

We need this bill. We need our elected officials to set the stage. Abraham Lincoln started it; the Federal government kept it going with Public Law 95-507. Now, we need help from the State level. I am in an area, also, where the Black businessman is getting pushed out. Sometime you might call a manufacturer, and he will say, "Unless you can guarantee me so much business in writing, you cannot represent my company." I ask, "Based on the bidding process, how can any company say it is going to guarantee you "X" amount of business, unless something is going on?"

These are the things that we, as Black businessmen, are faced with. We are constantly being shut out. We need this bill; we need your help. If you look around at all the Black cities throughout the State, if you watch what is happening, I'm on my way out.

If you look very hard, you can see what is happening to the Black man here in the urban cities of America. It seems as if we are



being-- I went into business because there were no Black businessmen around. I wondered why all we did was buy. I wondered why we couldn't be retailers. Why did we have to be consumers? Now, what do I see? What I see is disheartening to me. I see Orientals moving into my neighborhood, making up a certain percentage of the population. I look at my children and my grandchildren. What are they going to see? I have nothing against Orientals, nothing, but I cannot imagine myself going over to China or Taiwan and going into business. If you look at our cities --the Newarks, the East Oranges, everywhere -- every time there is a vacant store, you see Orientals coming in. Why? In my opinion, it is because of this great conspiracy on the part of our giant corporations. They are taking all of the industries out of America, and moving them to other countries, and so forth. In return, they are giving our cities to them. Thank you.

SENATOR LIPMAN: Thank you, Mr. Brown. We appreciate your coming today, and waiting us out for so long.

ASSEMBLYMAN THOMPSON: As an addendum to what you said, Mr. Brown, I think they are able to get loans from large institutions that we have never been able to get loans from. One of the things I think is important, not just in Newark, but in other major cities, is that if you try to rent an office, the value of the property remains. The property does not fall in value. They can't just walk in there without money; they are able to get loans. The money is syndicated out of Korea and other places, and through the banking institutions in this country.

MR. BROWN: Assemblyman Thompson, that is why we need this law. We need this law so we can get some money for the people who live in the communities, so they can open businesses themselves. I think it is very unfair. We used to talk about one ethnic group taking all the money out of our communities. What we have done is just exchange one ethnic group for another one which takes the money. We are still growing up with nothing. We are still looking for jobs.

SENATOR LIPMAN: Thank you, Mr. Brown. Mr. Sylvester Fletcher. Oh, wait a minute; I'm sorry. Mr. Fletcher, forgive me. Mr. Foxworth was halfway up because I said he would be next.

MR. FLETCHER: All right, I will be last.



SENATOR LIPMAN: Mr. Larry Foxworth, from the Minority Contractors & Craftsmen's Trade Association.

LARRY G. FOXWORTH: Senator Lipman, members of the Committee: My name is Larry Foxworth. I am the Senior Construction Analyst for the Minority Contractors and Craftsmen's Trade Association. The Association is funded by the Mayor's Policy and Development Office in the City of Newark. The purpose of our Association is to give technical assistance to minority contractors. The Minority Contractors and Craftsmen's Trade Association really supports this bill. We stand behind you, Senator Lipman, because in five years of employment I have seen the games that are being played on minority contractors. I have seen the lies which have gone down. I have seen the finagling and the negotiating. I think this bill will be very helpful to minority contractors, so, by law, they can gain a fair portion of the construction industry as it relates to bidding, as it relates to being able to get bonding, as it relates to being able to get insurance, and, above all, the set-aside.

There is one phase of the bill I must speak on, and that is, once it has been confirmed that a certain portion has been set aside for a minority firm, it is very important that that contract goes to a minority. I have seen, so many times, where the large developers come in and say, "Oh, I can't find a minority to do this," but the minorities are there. We really need this bill to support the minorities who are out there trying to bid on work. Thank you so much.

SENATOR LIPMAN: Thank you, Mr. Foxworth. Now, Mr. Fletcher, did you say you wanted to be last? (affirmative response) I have two more witnesses. May we have Mr. David Brown next? Then we will have the representative from the Public Advocate's office. Ms. Mason, are you speaking as a private citizen, or are you speaking for the Public Advocate?

MS. MASON: I will be speaking for the Public Advocate.

SENATOR LIPMAN: Oh, my. Okay, then why don't we have you first, Mr. Fletcher, after Mr. Brown, and let the State of New Jersey finish it up, unless you are going to give us a short prayer also. (laughter) He is Reverend Fletcher. All right, Mr. Brown.



**DAVID BROWN:** Senator Lipman, members of the Joint Committee: I am David Brown of Rahway, New Jersey, and I wish to address Senate Bill 544, the Minority Business Development Authority Act. As a lifelong resident of New Jersey, I am interested in seeing that the economic system functions for us all, which is why I favor Senate Bill 544, as introduced by Senator Lipman.

I am a graduate of the Woodbridge school system, the Newark Skills Center, and the New York Sales Dynamics Institute. I've been both a partner in the Rahway Shoe Rebuilding business, and Sales Manager for ARA Services, yielding a total of ten years' exposure to the business community.

I am presently a principal in Wilson-Bell Distributors, Inc., located at 737 East Elizabeth Avenue, Linden, New Jersey. Our company has been in existence for better than six years, and provides a variety of nationally-branded janitorial and sanitary supplies, paper products, industrial equipment and machinery, etc.

When I joined Wilson-Bell last year, I brought 15 years sales and managerial experience with me. I've seen that the bulk of our business comes from private industry; we have pursued State contracts, but have obtained none.

For the volume of products which the State requisitions, I feel Wilson-Bell could compete for a larger percentage of the State's business if we had ready access to bonding. For example, often we cannot afford, nor is it in our best interest to tie up capital for certified or secured funds for extended periods of time; thus, we do not apply for many State contracts.

In my view, Senate Bill 544 will assist minority entrepreneurs in solving many of their financial, managerial, and technical problems.

Most of us would agree that the major problem in any business is operating capital. I welcome Senate Bill 544, which would give minority and women-owned and operated businesses the opportunity to finance their business endeavors.

The way for us to learn the best way to establish a solid managerial and technical foundation for an enterprise, is from those



who have traveled these roads before us. I am in favor of the methods outlined in Senate Bill 544, which supports this concept.

I believe the strength of Senate Bill 544 is the governmental functions of the New Jersey Minority Business Authority, which would monitor the set-aside program, holding both the State and the minority contractors accountable, and resulting in a balanced economic scale. This is the best route for minority and small business persons to follow in order to continue to exist.

In conclusion, I speak in support of Senate Bill 544 because I believe it would give those minorities and women who want to share in this country's free enterprise system the opportunity to stay afloat, and sail upon the sea of economic prosperity. New Jersey would be helping itself, and would be an example to the nation, with the passage of this bill.

I am also in favor of what Mr. Brown said, in this way. With the passage of this bill, say, regarding the janitorial and paper products which the State purchases-- They purchase millions of dollars worth of products. Let's say, for example, our company was able to get into the bidding system to receive some of that business. Selling products to the State would help us along as far as dealing with the private structure was concerned, because of the amount of product that would be given, or set-aside that we could possibly bid on. It would help our business, and a great deal. There are a lot of departments which purchase these types of items.

I would like to commend Senator Lipman for giving me avenues and inroads for trying to obtain more business for our company, and we have been successful. I would like to thank her and her colleagues, and request them to continue to fight for us.

SENATOR LIPMAN: Mr. Brown, thank you very much for your comments. You know, there was a gentleman who reported for the Treasurer, who examined closely, line-by-line, all the legal points and technicalities which may be a little wrong with the bill. Tomorrow, he is going to give us a set of his regulations at a seminar, and we can return the favor. He is supposed to explain how the Treasurer intends to go about implementing the small business set-aside, which they are



presently doing. He was the Director of Purchasing for the State of New Jersey. He will be speaking to us tomorrow, so we will have a chance to talk to him.

MR. BROWN: Okay, thank you.

SENATOR LIPMAN: Next will be Ms. Verice Mason.

**VERICE M. MASON:** I am Verice Mason, Assistant Deputy Public Advocate for the New Jersey Department of the Public Advocate. I am here today speaking on behalf of Joseph H. Rodriguez, Public Advocate of the State of New Jersey.

We appreciate the opportunity to come before you today. I am not going to take up much of your time since it is so late in the day. What I am going to do, instead, is give you a copy of our printed testimony.

Briefly, I would just like to say that our Department supports the concept of a permanent State entity to aid in effectuating a positive climate for minority and women-owned businesses. In our testimony, we have outlined in detail some of the unique problems that face minority businesses today. Particularly, our Department has been involved with minority business for quite some time now, because many entrepreneurs have contacted us to explain the nature of the problems they are facing generally, and in terms of contracting with State, Federal, and local governments.

We have taken the time to detail some of the concerns. The major one is certification, and this bill does attempt to address that concern. In our testimony, we highlight the concerns that have been raised about certification, and demonstrate that there is a need for a centralized certification process.

So, I am going to just stop now and say, if you would look over our testimony, it adequately addresses our concerns about this particular legislation. We are willing to work with you in any way you need us to.

SENATOR LIPMAN: Thank you very much. Our Aide, Joe Capalbo, has a question which you may or may not be able to answer. Does the Public Advocate support an authority or a corporation? Maybe I should just put it like that.

MS. MASON: Well, let me say this: We support--



MR. CAPALBO: (interrupting) You used the word "entity."

MS. MASON: Right. We did that purposely.

SENATOR LIPMAN: You ignored the word "authority," so we're asking you--

MS. MASON: (interrupting) Well, the reason is, there are many ways to address the concerns of minority business, and we know there is more than one way in the hopper right now -- in the legislative hopper. The State currently has an office. As a Department, we are not taking a position on what is the best way for the State to handle how they are going to aid minority and women-owned businesses. We think, however, that there must be a permanent State entity, and we are not going to take a position on whether it should be an authority or a corporation, or whatever. We are just glad that the Legislature is beginning to address this issue, but there must be something permanent.

SENATOR LIPMAN: I see in your testimony -- just glancing through it -- that you did point out the fact that liquidation of minority businesses for the lack of proper funding is a large problem. So, that is in here. You did mention it.

MS. MASON: Yes. We received a number of complaints from minority businesses which were experiencing cash flow difficulties because of the failure of prime contractors in these situations to pay them promptly as subcontractors. We have found that the problems minority businesses have raised in that regard are really problems that quite a few minority businesses are experiencing. They get into a situation where they have an extremely high debt structure, because to perform certain contracts they go into debt to get the equipment to do them. Then, when they are not paid promptly, they sustain a series of financial setbacks. Many of them, from the complaints we have received in our office, are then subject to losing their homes, and all kinds of financial difficulties. I think that is relatively indicative of some of the concerns that small minority businesses are facing. As we say, some type of legislation is necessary to address that concern. There should be some type of loan moneys available to them for those difficulties.



SENATOR LIPMAN: I thank you for coming. Please present our thanks to Commissioner Rodriguez, the Public Advocate. We hope to have the opportunity to sit down with you to discuss-- (There is a comment from the audience at this point.) What did you want me to say?

FROM AUDIENCE: Ask about certification.

SENATOR LIPMAN: That was going to be the next word out of my mouth. We would like to sit down with you to discuss the certification process, which you mentioned in your presentation. The registry was also mentioned here. Since you have finished, I understand the Attorney General's office is now working on this certification. Is that where it is? That is what we heard today, from someone who testified.

MS. MASON: In July, 1982, minority entrepreneurs approached our Department and raised their concerns relating to certification. They said they were expending tremendous amounts of money to various certifiers, to be certified as legitimate minority businesses. Many times -- all too often -- they never received a contract. However, their concerns were not merely financial concerns. There was also a concern about the fact that many alleged fronts, that is, sham minority businesses, ones which say they are minority businesses but which really are not, were indeed getting the kinds of contracts that real minority businesses should have been getting.

They also presented us with the information that New York is looking at this issue, because they had found through hearings that many of their state contracts were potentially let to sham businesses. We looked at all the information they presented to us, and we then took up their request that we draft a uniform minority business certification document. We did this, as a Department, and we have turned it over to the Governor for his consideration.

SENATOR LIPMAN: Well, at present -- and I know where I heard this-- Deputy Commissioner Bleicki said they are sending out certain kinds of applications which have built-in certifications now, to determine what companies are minority businesses. They expect to locate 4,000 with this method of certification. Well, actually it is an application, but a certification goes inside the application. They



are certified at the time of application. This is what he announced is being carried out at the moment.

I want to thank you for coming, and for waiting so long. We look forward to working with you.

MS. MASON: Thank you, Senator.

SENATOR LIPMAN: From that I have heard today, I'm sure this bill will need plenty of work. It will just need polishing; the plan -- the idea -- is still the same, but clarification and legal expression are what need to be straightened out. I think that is about it. Thank you again.

Our next witness will be Mr. Sylvester Fletcher, who is a soil scientist. Mr. Fletcher is from the beautiful County of Sussex, is that right?

MR. FLETCHER: That's right.

SENATOR LIPMAN: He is also a member of the New Jersey United Minority Business Brain Trust.

SYLVESTER J. FLETCHER: After all that, Senator Lipman knows that I don't need an introduction. To Senator Lipman, and to the empty chairs which held your colleagues -- Assemblymen Thompson, Charles and Zimmer--

SENATOR LIPMAN: (interrupting) They will be back, unless they get stuck.

MR. FLETCHER: My name is Sylvester J. Fletcher. I am a professional soil scientist, and President of Natural Resource Dynamics. My testimony on the need to develop a Minority Business Development Authority represents my opinion and that of Natural Resource Dynamics, Inc. Natural Resource Dynamics is a consulting firm offering professional services in natural resource and resource-related projects. Specifically, our services include resource surveys and analyses, land-use planning, solid and/or liquid waste disposal planning, and others.

The present demand for capital, as well as the high and fluctuating interest rates, cause government, big business, small business, and minority business to compete in the same capital pool for the finances necessary to develop, operate, and expand.



Other forces, such as historic racism, prior discrimination, and the newness of many enterprises, further complicate minority business enterprise opportunities and place most minority businesses at the end of the line, where the acquisition of capital and contracts is concerned.

From my viewpoint, there are two prime constraints on minority business enterprise development. They are a lack of capital formation for business start-up and expansion, and a lack of equal opportunity to bid on and obtain contracts from agencies of government, as well as from corporations.

The above-mentioned constraints overshadow all others in their affect on the growth and development of minority firms within the State of New Jersey.

In some cases, as in my own, the firm may offer new and different services in the private marketplace. Lending agencies, be they local banks, or State sources of financial assistance, are generally unacquainted with the services offered by firms like Natural Resource Dynamics. Federal, State, and local lending agencies are generally unacquainted with the value of the services offered, such as those in the environmental field. Therefore, it is very difficult for a small minority-owned firm to adequately market its capabilities and compete within the present availability of financial resources.

The desire to develop and grow is present among minority firms, as is concern for the welfare of local communities and the State which we serve. Minority firms new to private enterprise often represent new ideas, products, and techniques of operation. However, there is a strong need for assistance from the State Legislature, hopefully for only a short period of time until a company grows large enough to compete on a stronger basis.

This Act, S-544, provides an opportunity for the State to help MBE's in capital formation and other financial assistance, contract procurement, and management assistance.

I believe the passage of this legislation and the development of a Minority Business Development Authority will result in a stronger private enterprise system in New Jersey, and an improvement in the



amount of business and number of jobs created in minority communities throughout the State.

I also believe that a stronger, more active minority business community will have a positive impact on community civic activities and civic life. It is a logical conclusion that where there is a shortage of sound businesses, hence a shortage of business people, the community fabric is weakened and the entire community suffers.

Finally, the MBDA will build bridges of cooperation between "majority-owned and minority-owned" firms, and will result in an overall healthier business climate in the State of New Jersey.

I thank you for the opportunity to submit this testimony, and I strongly recommend the passage of this legislation. Senator Lipman, I thank you, and your colleagues, very much for giving me this opportunity, and I really applaud your patience, your endurance, and all the other qualities you have shown today while listening to what we had to say. Thank you very much.

SENATOR LIPMAN: Mr. Fletcher, I want to thank you for your comments. My colleagues are back now. Assemblyman Thompson and Assemblyman Zimmer, I don't know if you heard enough of Mr. Fletcher's testimony to ask him questions, but would you like to? He is the last witness.

ASSEMBLYMAN THOMPSON: No, thank you.

ASSEMBLYMAN ZIMMER: Thank you for waiting through all of this, Mr. Fletcher.

SENATOR LIPMAN: Well, we started and ended with members of the New Jersey United Minority Business Brain Trust.

MR. FLETCHER: Right. I am a member of the Brain Trust. The other side of me that I didn't mention is Mother Fletcher's Chicken, which was mentioned here earlier today.

SENATOR LIPMAN: We know Mother Fletcher's Chicken; it's very good.

FROM AUDIENCE: He is also a Black citizen from Sussex County. (laughter) That is a rare species.

SENATOR LIPMAN: I think we have had strong evidence here today, a sort of outpouring of support for Senate Bill 544. Someone



said that this was a historic occasion. I sort of agree with him. This is the first time I have actually seen such a united front for any policy. Even if the form is not exactly what should be in this bill, and it must be clarified and refined, the need has been expressed today by many voices and many organizations. There is great support and a great need for such an "entity" -- as the Public Advocate's office has put it -- as the Minority Business Development Authority.

The record will reflect this, and I am sure it will be very helpful when we come to the actual passage of the bill. We will see that all the legislators have a copy of the transcript containing your testimony. We appreciate everyone coming. I also appreciate the assistance of my colleagues from the Assembly. I do not think it is from lack of interest that the other Senators are not here; I think it is just that they couldn't make it today. We have a full schedule these days, with the Joint Appropriations Committee, and so forth.

I hope to see you all again when we hear the bill in the Senate State Government Committee, which I am hoping will be May 14.

FROM AUDIENCE: May I have a list of your members? I have looked through my files, but I do not have that information.

SENATOR LIPMAN: Do you mean the State Government Committee?

FROM AUDIENCE: Yes.

SENATOR LIPMAN: I have a list that you can copy right here. Thank you all. This hearing is adjourned.

(HEARING CONCLUDED)



APPENDIX



the sponsor's intent. Further, the bill says an agency's performance will be compared with the State's aggregate performance, that is, the percentage of an agency's purchases from minority business enterprises will be measured against the State's percentages of such purchases.

The bill should explain whether the intent is to use the statewide average as an alternate minimum goal when, for example, that statewide average exceeds the 15% and 10% standards, or, possibly, when the statewide average is less than the 15% and 10% standards.

We see a need for clarification as well on enforcement against vendors supplying misinformation. We are not sure if this is the responsibility of the contracting agency or of the Authority.

Finally, we see a need for improvement in definitions, on Page 2, Section 3. Perhaps there should be a separate term to designate a business owned by women, or a broader term to refer to both categories. We see difficulty in referring to both businesses owned by minority group members and businesses owned by women as minority business enterprises, since this creates problems in interpreting other provisions. I think some of the other people who have testified have also pointed that out.

Regarding the legal area -- the second broad area of comment -- we believe there are potential conflicts between some provisions in this bill and the present contracting laws, as well as overlap of the functions of Treasury agencies and the Authority. For example, the Authority would pre-qualify bidders as to technical competence. This provision would seem to supersede a statutory provision which essentially permits the Division of Building and Construction to pre-qualify bidders for public works contracts, as well as similar laws applying to the Department of Transportation.

We must question whether it is necessary or beneficial to all parties concerned to establish two arenas of pre-qualification.

Here is a second example: The law changes the standard for the award of contracts. The award would be made to the lowest responsible bidder for the purpose of minority business set-asides. The present law allows awards which consider price, and other factors as well. We believe that consideration of factors beyond price is a



key ingredient of an effective purchasing system, and not incompatible with the sponsor's objectives.

We believe that there also exists a potential for delays in the purchasing process. For instance, the Authority is required to vote on every deletion of a business from the qualification list. The method of de-designating a purchase as a set-aside also has the potential of delay. Parenthetically, I would like to point out the difficulty of implementing the judgment as to when a price is unreasonable, as there is no effective way to do so without first soliciting bids from all vendors. In addition, this section should be made consistent with the present law, where judgments are not dependent on price alone.

The issue of qualifications could be difficult. Although a vendor may, in general terms, be qualified to submit a bid, it is by no means assured that he will be qualified for any particular award; that will be one of the issues in a bid evaluation. In fact, it is the type of issue which we resolve in administrative hearings when a vendor protests.

These provisions could lead to a second layer of review in which the Authority determines whether a vendor is qualified, and, a third layer of review conducted by the State Treasurer. The bill seems to make the State Treasurer the arbiter of disputes between the Authority and any contracting agency, including independent agencies, authorities, and the like, with yet another avenue of the appeals process.

Lastly, in the enforcement area, with any set-aside or preference bill, the Legislature has a legitimate concern that the goals established in the bill be met. However, in some cases, the enforcement provisions seem to be extraordinarily strong and potentially counterproductive.

Under Subsection a., when an agency acting in bad faith fails to meet the goals for set-asides, the Authority may cancel a contract and order it to be set aside. Our lawyers advise us, preliminarily, that the provision stands a good chance of being invalidated in the courts.



We believe this might discourage non-minority business from dealing with the State at reasonable prices, for fear that their contracts may also be cancelled.

Another difficulty here is that it is not made clear how many contracts could be cancelled after a finding of bad faith, and how long this cancellation period would continue.

Subsection b. underscores the need for clarification of the degree to which this law would be absolute, which we raised earlier. Here, a category is established, as a penalty, in which qualified minority enterprises shall have an absolute first right. And yet, there might be an interpretation that every contract is to be set aside if there are three qualified businesses available.

Again, in the interest of time, I have summarized some of our review and raised issues, but have not referenced every detail. We would certainly like to offer this Committee our willingness to work with your staff, and the sponsor, on any refinements, or on any suggested amendments you may determine you require.

SENATOR LIPMAN: Thank you very much, Mr. Bush. I really would like to sit down and talk to you about the refinements in this bill, but some of them that you mentioned here have already been taken care of by implementation. They have been left out of Senate Bill 544. Some of the things which do not seem to be clear or answered, you have already implemented very well. In the case of the awarding of contracts to small businesses, you are grappling with that subject now with Chapter 482. I imagine that before this gets through the Legislature, you will have figured it all out.

Also, an in-state preference is very difficult to state. Certainly, minority business enterprises would rather be chosen, than to have outside business enterprises coming in, but there is a very fine line before you run into reciprocity from New York and Pennsylvania. There are certain statements which can be made, which do not challenge the reciprocity among these states, and which will still set up a sort of in-state preference. Do you agree with that?

MR. BUSH: I would like to qualify that. The point of my remark was that, currently, the small business set-aside legislation



does contain an in-state preference. We were merely commenting on the inconsistency between this bill and the small business legislation. They are grappling with that issue at the moment.

SENATOR LIPMAN: Well, if we didn't say it, we meant to say it; we thought we were saying "preference" for those who live in this State.

MR. BUSH: But, on the broader issue that you mentioned with regard to reciprocity, yes, those conditions do exist. But, assuming that they were taken into account and referenced in a small business set-aside, we believe there ought to be a consistency.

SENATOR LIPMAN: Also, I would just like to mention -- I won't hit each one of them, although they all need work, as you mentioned -- the 40% set-aside. If you add it all up-- I never think it is too much to ask for a greater percentage, because it is always going to be reduced in the process. Forty percent of all the State's business is improbable, but we would like a good goal percentage for minority business enterprises and women business enterprises.

I don't know if there is a term which is inclusive, because women do not want to be described as "minorities," since they are, indeed, a majority. They want to be described as women-owned businesses. We have said WBE's and MBE's. I don't know if that could be-- Perhaps some of the women who are going to speak a little later may be able to clarify this. There is also DBE, which I do not understand. Is that a classification for both -- disadvantaged business enterprises?

MR. BUSH: I am not certain.

SENATOR LIPMAN: There are WBE's, MBE's, DBE's, and so on. We are having a little trouble with that. However, I would like to sit down and discuss this, because you have made some very good points where probably the language could be classified more. Certainly, we do not want any delays in delivery of contracts. We want the sanctions and penalties enforced. All right?

MR. BUSH: At any time, we will certainly be prepared to offer that assistance.

SENATOR LIPMAN: Thank you so much. Assemblyman Charles?



ASSEMBLYMAN CHARLES: I have just one question. You may not feel like answering it, or you may not want to answer it. Do you have any thoughts about whether this Authority would function better if it were established within the Department of the Treasury, as opposed to the Department of Commerce and Economic Development?

MR. BUSH: I don't know if that is appropriate. You may, in fact, have asked me for a policy judgment, which I do not think it would be appropriate for me to make. I think we understand the Department of Commerce as the Administration's agent in furthering economic development for minority business enterprises, and I think I will confine my remarks to that statement of fact.

ASSEMBLYMAN CHARLES: All right; thank you.

SENATOR LIPMAN: Assemblyman Thompson, do you want to ask Mr. Bush anything?

ASSEMBLYMAN THOMPSON: Yes, I have one question. In the fourth paragraph on the last page, you mentioned that another difficulty here is that it is not made clear how many contracts could be cancelled after a finding of bad faith and how long this cancellation period would continue. It would seem to me that my response would be, it would be ad infinitum. If you found bad faith, you would automatically void the contract. I think every time this situation occurred, you would follow the same process.

MR. BUSH: I think what we were referring to there is the fact that we would have multiple cancellations on the basis of one problem. In the case of Department requirement procedures we have with other appeal processes, what criteria, or conditions, or period of time would prevail before a proper case, or a time period could be presented, and the vendor would, in fact, be again acceptable and eligible for bidding purposes?

ASSEMBLYMAN THOMPSON: Well, there are some things you could probably enumerate on with reference to conditions, but a good example of a person who is operating in bad faith -- in fact, we have some legislation to deal with this-- We anticipate that minorities will be used as fronts; other people will put up the bonding money, the material, etc., will stand in the background with a gentleman's



agreement, and will get the contract. This has happened in New York and in other jurisdictions. I don't think that the responsibility should be on the Senator in drafting this legislation, or that every anticipated problem has to be in the legislation. That is almost like overdrafting, and it is impossible. I think if it can be put in certain terms where it fits within the confines of the whole legal jurisdiction, it will work. You just have to deal with it, maybe, on an appellate level, or maybe with an Administrative Judge. I'm not sure, because this is in the embryonic stage.

MR. BUSH: Yes, I think a large amount of what you say is true. We were just trying to point out that perhaps there could be more specificity -- not to such detail as I understand you are trying to say -- which would help to better clarify the intent of the legislation.

ASSEMBLYMAN THOMPSON: Thank you.

SENATOR LIPMAN: All right. Thank you very much. We are looking forward to hearing you speak about procurement at Saturday's seminar, Mr. Bush.

MR. BUSH: Thank you very much.

SENATOR LIPMAN: The next witness will be Mr. Arnold Hamm, of the Oliver Brown Trucking Co., Inc.

REVEREND ARTHUR S. JONES: Senator, may I leave copies of my statement; I will not be able to stay.

SENATOR LIPMAN: We could get to you in pretty short order if you could stay.

REV. JONES: Mr. Hamm has a lot to say.

SENATOR LIPMAN: Everyone is only supposed to speak for six or seven minutes. That is as long as Mr. Hamm is going to speak.

REV. JONES: Well, where am I on the list?

SENATOR LIPMAN: Well, we sort of got confused on this list, but you can see that the room has cleared considerably.

REV. JONES: Maybe I ought to just try to wait. We are supporting this legislation, of course.

SENATOR LIPMAN: Thank you, Reverend Jones; thank you very much. That was Reverend Jones of the St. Mark's AME Church. We will



have Mr. Arnold Hamm of Oliver Brown Trucking, and then Mr. Carl Norman.

**ARNOLD K. HAMM:** Thank you very much, Senator Lipman. My name is Arnold Hamm. I am Vice President of the Oliver Brown Trucking Co., Inc., which is based in Middlesex, New Jersey. To give you just a little bit of background on myself, I have a college degree. In 1983, I was recognized by Outstanding Young Men of America and, also, my biography is included in the 1983-1984 edition of Who's Who in Finance and Industry. Currently, I also serve as Chairman of the Human Relations Commission in the City of Plainfield. However, today I speak from a business standpoint.

Oliver Brown Trucking Company, a Black-owned business, celebrated its twentieth anniversary during 1983, and holds Interstate Commerce Commission authority to haul general commodities freight in the continental United States. Although we possess the necessary certification, some major corporations have not been totally accessible so as to develop and initiate a working relationship. The transportation industry is unique in that we are generally required to compete against the major carriers. The problem is that small minority carriers -- such as the Oliver Brown Trucking Co., Inc. -- do not have flexibility in establishing a profit margin, the way major carriers do. There have been situations where our rates were deemed competitive; however, we were not awarded the work because of a long-standing relationship that the company had with the current carrier. In other instances, Oliver Brown Trucking has attempted to initiate a joint venture based on contacts made at various minority trade fairs. Unfortunately, the Fortune 500 companies cite our inability to match existing rate levels.

Currently, the opportunity of hauling shipments for the State of New Jersey is quite limited. On Department of Transportation projects, the general contractor subcontracts the materials out and the vendor is responsible for moving the freight. With respect to items procured by the Department of the Treasury, contracts are awarded based on a delivered price. As you can see, the current system precludes potential opportunities.



When discussing financing, all matters revolve around the banking institutions. Cautiousness on the part of bank officers always prevails when seeking assistance. Loans are always put together to suit the bank, which acts or reacts in a conservative manner. One prime example was the loan request presented to our alleged "friendly banker." Although unreasonable and unconscionable, the loan had to be secured with \$10.00 of collateral for every \$1.00 borrowed. Such a ratio is not common, to the best of our knowledge. I would add that initially, at some point, we were advised that not enough collateral was available, and in more recent months we were advised by the banking institutions that they are not in the real estate business, nor are they in the transportation business. Furthermore, we find difficulty in increasing our line of credit from \$100,000, although substantive documentation allows for more, and Oliver Brown Trucking has consistently requested more. Our revenue in the last fiscal year exceeded \$2 million. Some of the bank's actions acknowledge their philosophy that minority businesses are a risk.

I must also note that such attitudes do not exist only with banks; there are corporations that purport to help minority-owned businesses with capital investments. Their programs require an enormous amount of research, data, and reports. There are costs associated with the mandates, and you are not guaranteed anything for your investment. Lending people deal with loans, and do not necessarily understand the needs and concerns of minority businesses. Make no mistake, there is a different interpretation. If a minority-owned trucking company established in excess of 20 years ago has problems obtaining the financial assistance necessary, newer minority businesses encounter a greater abundance of resistance. Our stake is planted within the State of New Jersey. It is unfortunate that there are individuals who view our enterprise as a threat to their piece of the pie. We are consumers, and we understand that a pie can be proportionately or disproportionately divided. We do not seek star-studded fantasies; we merely seek our fair share. The issue of reciprocity has been highlighted by the media. It all boils down to the same thing. We look to operate with free hands, excluding the handcuffs. Defeats only make us stronger.



Senate Bill 544 seeks to address such an agenda. The New Jersey Minority Business Development Authority will provide a multitude of services. The area of guaranteeing and insuring loans made by private financial institutions is important. Considering the make-up of the Authority membership, a better dialogue can exist because a better understanding is in place. It is important that minority businesses have a chance to work with an entity committed to the goals and objectives articulated in this bill. We are not looking for handouts, merely those who willingly and voluntarily stretch their hands out to reach ours.

In conclusion, I wish to commend Senator Wynona Lipman for introducing this bill. Furthermore, I wish to commend this Committee for acknowledging such a necessity to the point where today's hearing was called. I trust that this bill has the support of all Committee members.

I thank you for this opportunity, and I pray that your insight will provide some light at the end of our tunnel. Thank you very much.

SENATOR LIPMAN: Thank you very much, Mr. Hamm. Do you have copies of your statement for us?

MR. HAMM: I will leave a copy with the stenographer.

SENATOR LIPMAN: Oh, all right. I promised Mr. Norman, who is Chairman of the Board of the MIS-ATSE Corporation, that he could be our next speaker. He has been waiting for a long time.

CARL V. J. NORMAN: Well, you know, I am impressed with what I have heard. This is my associate, Mr. Woody Miller, of Camelite Builders. It is an honor and a pleasure to address such a distinguished body.

We have heard all kinds of complaints and, you know, what we can do about this, that, and the other thing. For seven years, we have worked diligently on a program which we can certainly relate to all the testimony we have heard here today. For that reason, we will not be redundant, nor prolong these proceedings. I would just like to read a statement. Also, I would like to go on record as saying that I, Carl Norman, am the original author of the materials written for the Urban Industrial Enterprise Trade Zone. Through political bureaucracies,



both on the Democratic front and the Republican front, this effort was circumvented, and somehow or another, now they have a ball that they just can't handle. Right now, I am going to read the original Urban Enterprise Trade Zone proposal that was submitted, and this is just a brief summary.

In 1977, a group of professional businessmen and community organizations became frustrated with the deteriorating conditions in inner-city communities. The following information identifies a unique development venture which we feel is the answer to President Reagan's Employment Concept, compiled over a five-year period.

Background: When we say MIS, we are talking about the Manufacturers' International Syndicate. That is what MIS stands for. ATSE stands for Advanced Technology Systems Extended. The Manufacturers' International Syndicate was formed for the purpose of establishing diversified manufacturing facilities in inner-city communities, and to create employment through technology transfer. Through successful negotiations, \$38.5 million has been secured for the purpose of constructing a vertical industrial trade zone that will create approximately 20,000 jobs throughout the State of New Jersey.

This employment project is a pilot project. It will be implemented in 45 distressed urban cities throughout 18 states. The Urban Industrial Enterprise Trade Zone will create 840,000 jobs in 45 urban depressed cities for manufacturing and high technology projects.

Proposed Financing: The proposed financing will be arranged by the International Investment Syndicate. I would like to stop here, because the International Investment Syndicate-- We are members of International Middle East Associates, which is comprised of a group of businessmen from Saudi Arabia, throughout the Middle East, and Africa. As I said, the proposed financing will be arranged by the International Investment Syndicate. This syndicate represents 21 offshore private investors who have agreed to finance the developmental stages of the pilot project that consists of the following construction projects:

Housing Development: Under the pilot development project, a total of 691 units will be constructed to service the poor, the elderly, the handicapped, and middle and upper-class clientele, approximately 31,100 housing units nationwide.



Urban Enterprise Trade Zones: The combined efforts through the joint ventures of MIS-ATSE and the International Investment Syndicate will finance the construction of 550 business urban enterprise trade zones. These trade zones will create 55,000 small businesses nationwide, and 200,000 jobs.

Diversified Energy Projects: Advanced Technology Systems Extended has joint ventures with three engineering firms--

SENATOR LIPMAN: Excuse me, Mr. Norman. How does this get back to the development Authority we are discussing? You are giving us the national picture.

MR. NORMAN: Okay. What we would like to do at this point is-- We have heard from many minorities throughout the State, and we know the facts. I have in my pocket, right now, a \$100 million loan guarantee commitment that was approved in 1982. To give you a picture of what everyone on this side of the chair is going through, we went to the Broad Street National Bank and asked them to be the conservator over the account. As a result, they had to make contact with the Bank of Hong Kong, and the Bank of Hong Kong told them that they had to put up a bond. At that time, I said to my wife, "I want to show you how the system works." So, we went back down there. By this time, they had come up with all types of investments for the \$100 million we were supposed to borrow from the offshore lending institutions, and how they were going to put in a short-term loan situation -- Ginnie May, Fannie May, Freddie Mac, etc. As a result, when all the smoke cleared, the people from the Bank of Hong Kong, out of New York City, asked them if they could put up a bond to guarantee the money that would be coming through their system. However, they could not do that. As a result, we went back down to the Broad Street National Bank, and asked them, as a minority business enterprise, could we borrow \$40,000. The answer was a flat "no."

You know, it is a long drop from \$100 million to a \$40,000 loan request, but they had taken our money; they had pre-invested everything. Now, we have organized, but we have no political affiliation because we feel as though this has been our problem in the past. If a program is implemented by the Democratic Party -- if a program is established under that Party, no one wants--



ASSEMBLYMAN CHARLES: Excuse me. Senator Lipman asked you a very legitimate question -- please. We have a lot of people here. How does all this fit in? We have to deal with this subject; it is very important.

MR. NORMAN: I realize that, but if I could just elaborate. You know, we have heard a lot of wasted testimony. I have something here that is pertinent and relevant, not only to the bill, but to our communities. We are living in dying communities.

SENATOR LIPMAN: All right, Mr. Norman, proceed.

MR. NORMAN: Thank you. You see, we are looking for short-term answers to problems we have had for over 400 years. You're looking for a five-minute solution.

ASSEMBLYMAN CHARLES: No, we're not.

MR. NORMAN: Well, anyway, what we would like to do, as far as the bill is concerned, is to get our consulting staff, and our attorneys, to try to do a joint venture with the Authority, so we can make moneys available to the Authority from the private sector, because as you try to get money out of New Jersey, you're reaching for a pie in the sky, and the pie in the sky no longer exists. You don't even have hope anymore.

I'm telling you something that I know about. I deal with people on that level. Basically, what I am trying to tell you here now-- You're talking about legislation that may take two, three, four, five months to implement. I'm telling you, there are people out there who are hungry now. We need bonding; we need employment. As far as bonding and what not is concerned, you have an awful lot of contractors out there who bid on the roadwork for the Department of Transportation, but who cannot get bonding.

ASSEMBLYMAN THOMPSON: Excuse me. Let me mention something. Evidently, you do not understand the legislative process. If this lady, Senator Lipman, can get legislation as important as this is through in five months and signed into law by the Governor, then most people can wait five months. Do you understand that? I'm very serious.



MR. NORMAN: Understand my point. I understand what you are saying; now, you understand what I'm saying. Attorneys came in here, and you talked about the Civil Rights Act of 1964. You talked about the Civil Rights Acts of 1965 and 1968. Let's go back to the beginning of the Civil Rights Act. We have legislation on top of legislation. We have enough legislation to fill every office building that the State has, but you do not have one thing you can enforce that legislation with.

What I am trying to bring to Senator Lipman's attention -- and I appreciate everything she is doing -- is to give me what I need, not what you want me to have. That is the only thing I am saying. I'm trying to tell you what we need. I'm not worried about what anyone else needs. Everyone here is here for their own particular reasons. I am here to give you the facts. If you can't deal with that, then maybe I shouldn't be here.

SENATOR LIPMAN: Mr. Norman, do you need the Minority Business Economic Development Authority? Do you need it?

MR. NORMAN: Let me elaborate on that as well.

SENATOR LIPMAN: Just answer the question. You said to give you what you need. So, I'm asking you, do you need this bill?

MR. NORMAN: Yes, ma'am, we do need it. But, I'm saying that we need it with restrictions. I'm saying that there have been many, many programs. The Community Development Block Grant has been passed; the Urban Development Action Grant has been passed; but, when we get to the bottom line, the minorities do not get anything. So, you can take it as a joke, or whatever, but I'm telling you that we don't want it to come out so that once it is established, you forget what the real purpose is, and what the Authority was achieved for. That is the only thing I'm saying. There has been legislation on top of legislation. What you're doing is not the first time it has been done. In 1974, Congress passed an act for the banks to come out with the Community Reinvestment Act, and there is not a soul who enforces that. They thought they would ease the minority limit on borrowing when they came out with the Urban Development Action Grant. The only thing you need to do is get a committee to make the banks respond to that law. That is what I'm saying.



As far as the Authority you are trying to establish here now is concerned, certainly there is a need for it, but we do not want to have it get lost in the wind.

SENATOR LIPMAN: I understand.

ASSEMBLYMAN CHARLES: Mr. Norman, may I ask you to conclude your remarks, and get to a summary of what your point is?

MR. NORMAN: Well, I'm through, because, obviously--

SENATOR LIPMAN: (interrupting) Mr. Norman, I just want to tell you that you are right about legislation having been passed and put into law, and then never implemented. You are right that the need is still there. What I think we are all saying is, that is the reason we are here right now.

Did your associate want to say something?

MR. MILLER: No, thank you.

MR. NORMAN: Senator Lipman, let me tell you something. I had the courage to do something that Senators, Congressmen, or no one else would have the courage to do. I moved out of a plush, penthouse apartment on Park Avenue, and came down here and stayed at the Miller Homes, which is a dilapidated, deteriorating housing project, to find out what the people need. I'm telling everyone -- I'm making this statement now -- it may be a great big joke, and everyone is saying, "Go on, go on." That is the reason why Black people have never gotten anywhere, because we have always been rushed into various types of things, and we never understood what it was we were being rushed into. I certainly appreciate what you are doing, because we need more people like you three individuals who are up there now. The only thing I'm saying is, the real issues here have really been aborted. I have heard a lot of political speeches here; I have heard a lot of other speeches here. Do you understand? I am trying to deal with issues which are pertinent and relevant. I am trying to deal with the issues down in the valley, not those which sit on top of the mountain. There is no way possible that anyone but God himself can deal with, and analyze, a problem that sits in the valley, unless he is down there himself. I am trying to tell you that the people out there today need the help. We need more than just legislation; we need participation. We need



enforcement. If you are going to set up an Authority and say, "Well, here it is; come and get it," you know, it doesn't mean anything.

SENATOR LIPMAN: Your quarrel is with the enforcement of the law. Certainly, if we are able to get this legislation through, Mr. Norman, we will try to monitor it and see to it that it is enforced. There is a sunset provision here that we are going to take away, so we will have enough time to do that. That's a promise.

Thank you very much for coming today.

Assemblyman Zimmer had to leave; he has a meeting downstairs, but he will be back.

Our next witness will be Ms. Doris Fullerton of the New Jersey Association of Women Business Owners. You've been here a long time too, Ms. Fullerton.

DORIS FULLERTON: Senator Lipman, members of the Joint Committee, and fellow business owners: I am Doris Fullerton; I am President of Here To Help, Inc. We are the nation's largest medical claim assistance service. I have attended classes at Centenary College, the County College of Morris, the Career Academy in Milwaukee, and the George Washington University in Washington.

I am an active member of the New Jersey Association of Women Business Owners, the Morris County Chamber of Commerce, the Hackettstown Area Chamber of Commerce, the American Society for Training and Development, the National Association for Female Executives, and Zonta International.

I have received numerous letters of appreciation for the work of our firm from government officials, the Advisory Council on Social Security, the House Select Committee on Aging, and the Lions Club. I have also been listed in Who's Who in American Women, Who's Who in the East and, most recently, The World Who's Who of Women.

In September of 1983, I was honored with an appointment by Governor Kean as the Warren and Sussex County Coordinator for the first of President Reagan's Women's Business Ownership Conferences, held here in Somerset in October.

Prior to beginning my entrepreneurial career, I was office manager and, later, administrator for surgical and medical practices



for about 15 years. I was fully responsible for the daily operations of the business side of these practices, as well as for much of the clinical portion.

In 1977, I founded a consulting firm for physicians and dentists, using my practice management experience to benefit others. Dealing with the business side of numerous and varied practices clearly proved to me the need for the patient to have an advocate. All too many seriously ill and dying patients were having enormous difficulty handling the paperwork involved. The result: Their accounts were frequently turned over to a collection agency for moneys that really very easily could have been collected from their health insurance carriers. That is what we do. We help to make sure that people collect everything they are entitled to under their health insurance plans.

Here To Help's services have been offered for two and a half years now. It was begun with an idea, and a great personal investment of time and money. The test market -- which was quite successful -- was our story which appeared in Family Circle magazine. We were interviewed in February, 1982. At that point, we had been in operation for only six weeks. The results were individual clients throughout the United States -- not just here in New Jersey -- and even a retiree in Mexico, as well as hundreds of requests for franchises across the United States. We have built upon that response and have trained Health Benefits Coordinators from Connecticut to Oregon. We are now the largest medical claim assistance firm in the country, with our national headquarters right here in Morristown. And, we are owned and run by women.

The very first thing I did when I started my company was write down my business goals, and then develop a formal business plan detailing our controlled expansion. It is not easy for a novice entrepreneur to work out the details and implement such a plan. Persistence and knowing where to go in search of guidance, and to whom, made all the difference for me. Many great ideas never get off the ground because the entrepreneur does not know where to go for help. This is a major reason why it is so important to implement this bill;



the guidance, financial advice, resources, and opportunity to be made available through this bill are invaluable.

Here To Help contracts for services with attorneys, banks, small businesses, and individuals. We also deal with a lot of states. We have not pursued State contracts, although several State employees use our services. We have not discounted the possibility for some point in the future.

SBA loans to fund our expansion have been considered several times over the past two years. My husband and I invested our life savings in the Here To Help venture and, for many reasons, I decided not to finance the expansion personally. I chose, instead, to seek venture capital, and I am gratified with the result.

At an early point in our history, I was thrust into a totally foreign and confusing situation by an offer to buy my business. I did not know how to place a dollar value on a business idea. Where do you go to find out? It is really imperative that the business owner not lose control in a situation like this, or everything could be given away and lost. How do you negotiate the sale? What is reasonable when negotiating an employment contract in a situation like this, what are the usual perks, and on and on? Negotiations are critical. Help will be more readily available with the passing of this bill.

I am happy to see that the proposed bill is designed to utilize the strong capabilities and experience of all small business owners. The incentive to promote competitive growth, and in turn create more jobs, is exciting to me. This bill will present both opportunities and resources that might otherwise not be there.

I am concerned about the qualifications of firms seeking business set-aside contracts. It is very difficult to judge the potential of any small, viable business. Most small firms are undercapitalized. To handle a contract, an objective review of the management, technology available, and long-term financial abilities of each firm must be provided. I feel this statement should be limited to a certain number of pages, including cover sheet, budget, curriculum vitae, and attachments, to provide a quick-screen mechanism, to hold down the cost of statement preparation and the review process, and to



equalize the opportunity for all bidders. This statement should be reviewed by the Authority annually. Again, control is the key.

I have struggled repeatedly with new obstacles and have investigated numerous avenues to pursue in my business. The network of professional contacts I have developed is invaluable to me. The availability of those who have shared experiences, the same high level of energy, integrity, a willingness to listen, openness to new ideas, and the ability to handle people well, to make each person feel important -- fellow entrepreneurs, winners -- for minority and women business owners is essential to nurture the development of the heart of the nation's economy, the small business.

I strongly urge support of Senate Bill 544. Definite authority through legislation has been a long time coming, but will help make a difference in so many lives.

Thank you for the opportunity to be here today.

SENATOR LIPMAN: Thank you, Ms. Fullerton. Thank you, too, for waiting so long. You're from the New Jersey Association of Women Business Owners.

MS. FULLERTON: That's right.

SENATOR LIPMAN: Assemblyman Thompson, would you like to ask some questions?

ASSEMBLYMAN THOMPSON: No, I have no questions, Senator.

SENATOR LIPMAN: Assemblyman Charles?

ASSEMBLYMAN CHARLES: No questions, thank you.

SENATOR LIPMAN: All right. Ms. Fullerton, thank you very much for coming today. May we now have Mr. Donald Wilson from the Urban Business Coalition?

DONALD WILSON: I am Donald Wilson. I wish to thank Senator Lipman, and her colleagues on this Joint Committee, for giving the Urban Business Coalition a chance to give support and testimony on behalf of Senate Bill 544, which concerns technical assistance, capital formation, and advocacy of small minority businesses. The U.B.C. is an ad hoc group of minority construction contractors, small business owners, and professional and community leaders who are united in an effort to create economic development and employment opportunities for



our communities. We interact with State and local government officials.

The Urban Business Coalition feels New Jersey is least effective in contract monitoring and compliance development. We would like to move the minority business community into the mainstream of this nation's economy. We applaud the efforts of Senator Lipman in introducing Senate Bill 544, her success with Senate Bill 866, and the many other areas of small and minority business programs she spearheads on our behalf, but the Minority Business Development Authority Act must go further. There must be an independent agency with effective enforcement powers to monitor the compliance of contracts given to contractors and vendors who must meet equal opportunity requirements, as well as contracts developed for minority businesses. Some of the following reasons should make it clear as to why this agency is necessary:

(1) Bid rigging by local government officials: If you are from Hudson County, you know what this is about. It is in the newspapers constantly, Kelly's Corner, and the Jersey Journal, the leading paper in Hudson County.

(2) Back room designation of developers for major projects: All of this can be confirmed by our local paper, which is one of the leading papers in the State. In Kelly's Corner, their own people tell on themselves what they are actually doing to us. So, it is essential that this bill go forward, Senator, because the bill will make everyone aware of the areas where they are hurting us the most. You know, with bid rigging, they can stop us at the door, before we even get to the contract. They stop us because they have already made the deal concerning who the developer is going to be.

(3) Poor rate of minority business development even with present laws, such as Public Law 95-507: Executive Order 12432 requires Federal agencies to promote minority business enterprise participation in their programs. As the last gentleman just said, we need this law, but we also need something to make people comply with the law. This is very important; this is what hurts us. We get the law on the books, but it is never enforced. We know, from you and from



the different seminars you have held in the Newark area, and here in the Senate, that you are very much interested in helping us, but we need compliance.

We wrote a letter to Governor Kean, which said: "Governor, there can be no waterfront or community development if situations such as the high crime rate, the interest rate, and the unemployment rate are allowed to continue. There will only be the development of social disturbance among very frustrated people." When we talk about waterfront development -- some people are not from Hudson County -- we mean the multi-million dollar projects going on there. These projects would mean construction jobs for a great many people. This bill is very important to us in Hudson County, because it would give us more gunpowder to fight these people with. It is really hard. If anyone knows anything about Hudson County, you need gunpowder and a nuclear bomb to destroy what is there, because it is hard.

SENATOR LIPMAN: Mr. Wilson, we Senators usually consider Hudson County as outside our limits. (laughter) However, we will try to make this bill apply to Hudson County, since it is in our State.

MR. WILSON: I see that we have one of our number one people from Hudson County sitting on the panel. It is interesting, because in the past--

ASSEMBLYMAN CHARLES: You're not going to direct the nuclear bomb at me, are you?

MR. WILSON: Oh, no. I'm just saying that in order to break up the organization, and get our people to work-- Our main thing is to put our people to work to keep them from becoming overly frustrated. This is very important. The other counties have a strong machine, but they haven't seen the likes of Hudson County yet.

SENATOR LIPMAN: I agree.

MR. WILSON: Every time you look around, there is a probe going on, all the way back. In summation, and I'll make this very brief, part of what we are asking for, along with this bill-- We feel we must have an independent agency that will monitor this industry regarding affirmative action guidelines and equal opportunity regulations that are already law, but which have not been enforced.



An independent agency would be instrumental in monitoring the compliance end of the contract. This could be accomplished, if we stood up to our commitments to the law and to God. Commitment is making an effort to do your job as a leader. We must stay in touch with the changes going on around us. Commitment is the key to making our State, home, and business what we want them to be. Many commitments require thoughtful protection. We of the Urban Business Coalition understand these principles and accept our responsibility to provide any kind of help possible to those who make commitments and keep them.

One last thing I will say in parting is, I believe in right because without it, there is the absence of God. I believe in God because without Him, there is the absence of love. I believe in love because without it, there is the absence of you. I believe in you because without you, there is the absence of me. In other words, what I am trying to say here is, without you pushing for us, Senator, we wouldn't have a chance in hell. We are coming to the end of this hearing now, and we can see who is still here representing us, and trying to get the job done for us. So, on behalf of the Urban Business Coalition, I thank you, Senator, and Assemblymen.

ASSEMBLYMAN CHARLES: I would like to thank Mr. Don Wilson for coming down to present his remarks. I'm sure he has represented, quite accurately, the viewpoint of many in our district and in our county. I would say it is through Donald's efforts that some of the improvements that are taking place, are taking place. It is through the efforts of people like Donald Wilson, and I thank you for coming down to support Senator Lipman's legislation.

SENATOR LIPMAN: I thank you, too, for all the kind remarks you made about this legislation and past legislation. I appreciate your assistance.

MR. WILSON: Thank you kindly.

ASSEMBLYMAN THOMPSON: Mr. Wilson, I have just a few remarks. I think the amendment you mentioned is important. I think we should take that under consideration, if it is feasible to let an independent agency do oversight. In many instances, if the Legislature



itself puts something in the legislation, they automatically have oversight. But, I see a problem with that when you are talking about something this important. You may have to have someone who specializes in this area who can give it more time, and provide some type of enforcement.

The other thing I think may be a possibility in this legislation -- which was brought up earlier -- is taking something under consideration that will achieve a tighter appellate process when you have questions that arise in case of fraud, and things like that; for example, when someone operating under the guise of a minority business, who is not of a minority, is really running the business; or, a woman, where you find out it was the husband who put up all the money, and her name is just up there in the front.

MR. WILSON: That is the very reason why we asked for a compliance section, because we, as contractors, have found out that in numerous instances, people do put up a front man for the job, and all he does is collect a salary. He knocks us out of the box because he can put up the bond, he can put up the seed money to run the job, whatever he needs, just running it through a third party. It hurts us. So, we need a compliance section where we can have people such as ourselves, who we know will be dedicated to weeding out these types of individuals so we can have an effective affirmative action program here in our State. Any other way would be a farce; we would be fooling ourselves. We must have it. I'm quite sure that one of the things the people from the Brain Trust have been talking about in the past is some form of compliance. It should be one of the major parts of this legislation, even if it has to be an ad hoc group, or a nonprofit group which could be sponsored by the Committee, or something. Something has to be done to make sure that we have a compliance section, because the government is not going to do it for us. Thank you.

ASSEMBLYMAN CHARLES: Right. Thank you, Mr. Wilson. Next, we will call on Ms. Irene Smith. Is Irene Smith here? (no response) Ms. Smith is not here apparently, so we will call Mr. Harding Dunlop.

HARDING DUNLOP: Senator Lipman and able members of the Committee: My name is Harding Dunlop. I am Director of the NAACP Urban Program. I am here representing our State President, Irene Hill-Smith.



We come as America's oldest, largest, most feared, and sometimes, most loved civil rights' organization. We feel it would have been inappropriate for this session to be held and us not come to lend our voice of support. We are totally and unequivocally in support of Senate Bill 544, as introduced by Senator Wynona Lipman. We believe it parallels our new thrust in the State of New Jersey.

My office is located in the City of East Orange. The New Jersey Urban Program was created to deal specifically with the tremendous and horrendous high unemployment rate within this State. We feel sincerely that one lever that can be used to fight these conditions is to strengthen our minority businesses. They are where the people are hurting the most. They are in our urban centers around the State, and they can employ and absorb, and make a dent. If they become viable institutions, they can make a great impact on the high unemployment rate. So, we commend Senator Lipman's efforts to get this bill on the books. We want her to know, and we want you to know, that we stand firmly behind it. If there is anything we can do -- all 35 of our branches, 14,000 of our people across the State -- please feel free to call upon us, and we will be at your side.

ASSEMBLYMAN CHARLES: Thank you very much, Mr. Dunlop. I see that the next person on our list is Ms. Ellen Werner, of Ellen Werner Personnel.

ELLEN WERNER: I, too, would like to say thank you for the invitation to speak before you. The words which have been said before me expressed a great many of the sentiments I came here to express. I really accepted the invitation more as a brainstorming opportunity, if you will, so that I could ask a few questions which I personally did not see clarified for myself.

First, I am Ellen Werner; I own Ellen Werner Personnel in Newark, New Jersey. I am in the same building where Senator Wynona Lipman has her offices, 50 Park Place. I have been in the agency business for 17 years, and all of those 17 years have been in Newark. I am dedicated to Newark; I would never leave the City of Newark. When I was fired from one agency in Newark, I was offered many, many positions outside of Newark, and I said, "No, I will not leave Newark."



I am also here on behalf of Women Entrepreneurs; I am the Vice President. Women Entrepreneurs is an association of women business owners. We are all women business owners, regardless of whether we are a minority or not. We are all minorities because we are women.

I was approached by a State agency to take care of some personnel needs the agency had. These needs would have necessitated my going to someone to train people on various word-processing machines. I know a woman business owner who I wanted to use so she could train these people for me to get the contract to service and place these people. Unfortunately, this woman could not be of service to me as quickly as I needed her, because she did not have the capital to buy the machines needed to do the training. So, while this bill is definitely a move in the right direction, I am questioning just how small are we talking about when we say "minority small businesses" or "women-owned small businesses?"

I have two people working for me in another area. One does technical work, and one does data processing. There are small businesses, and then there are small businesses. More businesses are small with 30 people or under, than are small with 30 to 100 employees, which might be able to scrape up the capital for an award that could be given to them. Yet, the person with the 30 employees or under would not benefit from this bill, because he or she would not have the finances to be able to go out to get the needed employees, possibly, because he or she would need more manufacturing, more services, more design, whatever it might be. I feel these people must be spoken for.

I am the Vice President of the Essex County Small Business Council, which is a division of the Newark Chamber of Commerce. The President there says I am the speaker for the underdog, and I feel that I am, because I find that most legislation, when designed, is designed in the general scope and, consequently, does not help people at the lower end of the spectrum. I'm wondering if there is some way that can be adjusted. I do not know how; I do not have a suggestion. As I say, I am here to ask questions.



I also see that in the State of New Jersey, minority businesses or women-owned businesses are not registered on a State level. Every organization has its listing. When the SBA is having a seminar -- and I am a speaker and lecturer for the SBA -- we all send in our lists. As often as these lists have been sent in to the State government -- or to the Federal government, for that matter -- never have they been coordinated so that when something is needed, we have a complete listing of minority and women-owned businesses. If the State were to approve, and this piece of legislation were to go through, I think it would enhance the people who know about this. How do we get information such as this to the minority business owner, to the woman business owner? I would suggest that possibly when a person registers a small business, the registration should go through on the State level, and be categorized, so that when the State needs paper clips, they know in their computer that there are 1,500 small businesses that sell paper clips and, also, of the 1,500, 10% have less than ten employees, and another 15% have less than 30 employees. That way you could define just how small a business we are talking about.

Now, on the Council I sit on in Essex County, we are all small businesses, and yet I sit with a man who, in my opinion, is not small business, because he has a factory and close to 150 employees. I would drown under that, if I had to compete with him on any level. It would be utterly impossible. So, I say, again, that I am here more to brainstorm and to present these things concerning registering small businesses.

I notice -- and this was brought up before -- that the set-aside for minority businesses and small businesses is 15%, and for women-owned businesses, 10%. My question is, not only is that 40%, but if we take those percentages and put them on a whole-year procurement program, won't small business be practically wiped out after five awards? That percentage would be used up.

SENATOR LIPMAN: That is a good question.

MS. WERNER: Let me say, it could be. I shouldn't say it would be. Fifteen percent of 1,000 is 150. If in one procurement you were doing construction, and in that construction you needed personnel,



textiles -- the whole gambit of whatever a small business would use on a construction site--

ASSEMBLYMAN THOMPSON: (interrupting) I do not think that is the way the formula goes. I will give you an example, at least the way I remember trying to implement the legislation which was just signed into law in January. I took a gentleman up to Martland, to the University Hospital of Medicine and Dentistry. From what I understand, the 15% was-- They have a very diversified operation. What I was looking at was not 15% of the business they do. This guy was in detergents. Fifteen percent of the millions of dollars of business they do in detergents -- the hospital has to run an operation of cleanliness at all times. That was what I was dealing with. If he had toilet paper, it would be 15% of that, not 15% of the whole thing. Sure, you could eat it up in the construction field. One guy could wipe that out.

MS. WERNER: I agree with what you are saying, sir. I don't know your name, but I do agree. This is not what 7a. says, at least my reading of it. I am not well-versed in reading legislation, but it says--

FROM AUDIENCE: (interrupting) Let's get the bill passed.

MS. WERNER: I beg your pardon?

FROM AUDIENCE: Let's get the bill passed first, and then we can take care of the other things.

MS. WERNER: Oh. Anyway, 7a. reads: "There is established the goal that contracting agencies set aside at least 15% of their total procurements for minority business." That is how I picked that up. Now, if it is on each assignment, or each award that is needed that that 15% will go to a minority business, and 10% to a woman-owned business, and then another 15% to small business, then you do have a problem if the minority woman has a small business. She can file a procurement application on everything that comes in. If she files as a small business, files as a minority business, and files in her woman status, it is going in three directions and, God bless her, she would have 40%. I have no qualm about that, but there may be some people who do. I do not have any qualm about that at all.



I would like to ask if there is a way we can register small businesses today, categorize them, and, also, put them in a line of how small small is? There is the New York/New Jersey Purchasing Council for minority purchasing, which is not that exorbitant, but is still a cross section. Of the minority business owners that I know, I would venture to tell you that less than 10% of them know about the New York/New Jersey Purchasing Council, where they can go to deal with big business. The amount of information that is out there for them is fascinating, but we are not getting it to them. I would like to know if there is a way we could get this information to them. They are filed by their State numbers; they have an identification number. I don't know why a flyer, or something like that, couldn't be sent out. I'm sure there is a reason. But, when we get our tax forms, why isn't there a flyer in there giving us a listing of what is about?

SENATOR LIPMAN: You just gave me a good idea.

MS. WERNER: You know, something. You know what I'm saying. The legislation is needed, but we have to have a way of getting the information out to people. That is something I thought I would bring to your attention. Thank you very much.

SENATOR LIPMAN: Thank you, Ms. Werner.

ASSEMBLYMAN CHARLES: Thank you very much.

ASSEMBLYMAN THOMPSON: I have one question. One of the issues you raised was that a minority business and a small business may not be synonymous in many instances.

MS. WERNER: No, I--

SENATOR LIPMAN: (interrupting) No, they are not synonymous.

MS. WERNER: I do not believe they are.

ASSEMBLYMAN THOMPSON: Okay.

SENATOR LIPMAN: We have a small business set-aside.

ASSEMBLYMAN THOMPSON: Yes, I know that.

MS. WERNER: Before I leave, I would like to thank Senator Wynona Lipman for putting women business owners into this piece of legislation. We do appreciate it.

SENATOR LIPMAN: Could I ignore women? (laughter)

ASSEMBLYMAN CHARLES: May we have The Reverend William Eichelberger?



**REVEREND WILLIAM L. EICHELBERGER:** Senator Lipman, and members of the Joint Committee: My name is William Eichelberger, and I am a Presbyterian clergyman employed by the Presbytery of West Jersey as a specialist in urban ministries. My base of operation is in Camden, New Jersey. I also come here as a member of the New Jersey United Minority Business Brain Trust, as its recorder.

I would like to approach this from a different perspective than some of the persons who have preceded me. I would like to come at this matter from a historical and moral direction, which I think is quite appropriate for what we are looking at here in this bill.

As I reflect on the brief history of the United States, I become vividly aware of some most interesting facts associated with the growth of this great nation. Let me take you back to 1520 A.D. to an incident on the Island of Hispaniola, i.e., Haiti. As observers from a different time frame, we view a most distressing event. The people who have colonized this island are engaged in a titanic battle with the Indians who are native to the beautiful land. The Spaniards are employing all the weapons of modern warfare of that particular era to fight the indigenous people who are fighting with spears, stones, and sticks. The Indians are being slaughtered.

An important question should probably arise to awareness in your minds at this time. Why are these people being brutalized in this manner? Well, the colonists are taking over the country, and want the indigenous people to do the heavy work on the plantations set up by the colonizers. The Indians refuse, and the Spaniards go to war against them to force them to work for nothing on land which had been taken from them.

One of the onlookers at this ghastly scene is The Right Reverend Bartolomo De Las Casas, the resident Bishop of the Roman Catholic Church. The good Bishop is greatly distressed over this sight. Shortly after this slaughter, he hurries back to Spain, by the fastest means possible, and shares his distress with the King and Queen of Spain. He appeals to the monarchs to prevent the reoccurrence of such brutal treatment of the natives of Haiti. The rulers of Spain comply with the request and subsequently issue a document, which later



becomes famous in European and New World history. The document is known as the Asiento. It gave permission for natives of Africa to be shipped from their shores to work the Spanish plantations in the New World. The indigenous people did not give their permission; the Spanish rulers did this.

This document, the Asiento, opened a Pandora's box of destructive ills which were released upon Black humanity. Across the years, the Spaniards sold the rights to different nations. Whoever held the Asiento had the right to steal Black men, women, and children from their native shores and force them into bondage in the New World for the rest of their natural lives. Many nations became involved in the lucrative practice of forcibly extracting people from their African roots and forcing them into a most abject form of slavery in the Americas. In North America, the form of bondage involved not only separating the people from their physical freedom, but consisted of efforts to strip them of a sense of their own humanity. Many laws, practices, stereotypes, and attitudes were developed to implement the dehumanization of Black people in the New World.

Black people were worked harder than beasts of burden during their first three and a half centuries in this land. Through their blood, sweat, and tears, and even their lives spent in wars against the enemies of this nation, this land has become a great nation through the labor and commitment of Black people. These same people who have been stripped of their labor with no return to them, have continued to be among the most loyal and believing Americans.

Periodically, the shakers, movers, and systems controllers have thrown crumbs of benefits to Black Americans. However, these crumbs have been totally inadequate. Nevertheless, many Americans from the majority community have felt that even these crumbs were too much. Others who were sympathetic to Black Americans suggested that the crumbs continue at a more moderate rate. Neither realized that their orientation indicated that business as usual was the appropriate way to deal with Black Americans. The style of maintaining Black Americans in poverty was just a little bit different.



I have come here today not to talk about the technical aspects of this legislation -- this proposed legislation -- because others who have much more skill in the analysis of this document have spoken before me. However, I come as one who has a humanitarian concern, and as one who has a great concern about the implementation of egalitarian justice for Black Americans who are residents of the State of New Jersey. My concern as a humanitarian incorporates other minority groups who have been stripped of their just rights and opportunities. Senate Bill 544 endeavors to take a giant step forward in addressing the aspect of the inequality that is structured in the very fabric of our society, and is reflected in the various agencies of government, as well as in the private sector.

The author of Senate Bill 544 speaks to the issue of egalitarian justice in an eloquent manner when she declares in the measure:

"The opportunity for full participation in our free enterprise system by minority group members and women is essential if social and economic justice for them is to be attained, and the functioning of our economy improved.

"The presence of viable minority enterprises will provide incentives for youth, as well as employment and business opportunities, all of which will strengthen and preserve their faith in our country's political and economic institutions and the philosophy of freedom on which those institutions are based."

My good friends, I trust that you, this afternoon and in the days to come -- you, the members of this Joint Committee -- will take the concerns and the thrust of this bill seriously, and recommend its passage by both houses of the Legislature, and eventual signing by the Governor. It should not be stripped of any of its potent features. If anything, it should be strengthened to make it as strong as humanly possible so that it may be a strong plank in the building of the new level of egalitarian justice in the great State of New Jersey. I thank you.

SENATOR LIPMAN: Thank you.

ASSEMBLYMAN CHARLES: Thank you for your remarks, Reverend. We intent to study this.



REV. EICHELBERGER: Thank you.

SENATOR LIPMAN: The Coalition of 100 Black Women will be represented by Rebecca White-Jones, who is the Chairwoman of the Economic Development Committee and a Member of the Board of Trustees.

REBECCA WHITE-JONES: I was all ready to say, "Good morning, Senator Lipman," but it is a little later than that now.

I am going to be very brief. I have paraphrased a lot of my presentation because of the time, and because there are so many other people waiting. In looking at the picture as a whole, society for the past 20 years has been instituting methods to correct the imbalances caused by racial and sexual discrimination. Of course, we have the Civil Rights Act, Title IV, Title VII, and Title IX, as well as the Equal Educational Opportunity Act, the Equal Employment Commission, and others. We've come a long way -- maybe not quite long enough -- since Plessey versus Ferguson and the ruling of separate but equal. Separate, of course, was never equal; we all know that. The result of this past discrimination and differential treatment against minorities and women has been financial. The old network -- and you know who that was -- established a system by which all wealth and power was controlled by one segment of our society. Now, that same establishment is complaining about the burden of supporting the rest of society. Their alternative is to cut back on the millions of dollars poured into social programs meant to give assistance to the less skilled, the less educated, and the poor. And then what -- after they cut back on the programs, then what?

According to the 1980 census, the average salary of a White male is \$21,000; for the Black male it is \$15,000. But, the lowest on the income scale, at \$11,000, is the Black woman. That means that if her average salary is \$11,000, some of them do not even make \$11,000.

Although Blacks compose only 11% of the United States population and 16.5% of all unemployed workers, they make up nearly 34% of the jobless in this country. White males during this period were only 5.6%. Hold those figures for a moment. Sixty-six percent of all the women in this country work outside the home, either full-time or part-time. Two-thirds of those women are single, widowed, divorced,



or their husbands are disabled or make less than \$15,000. But those women, for the most part, are in the dead-ended, low-paying jobs, which contribute to the fact that of the people classified as poor in this country, 63% are women. Three point one million children make up 70% of the poor families maintained by Black women; 50% of the families maintained by poor Hispanic women; and, 39% of the families maintained by poor White women.

Poverty is a source of crime; you know that. Would the State rather spend money on unemployment, penal, and rehabilitation programs, or provide something as positive as this Authority? Minority entrepreneurs can make a significant contribution, if given the chance. This bill, S-544, will give that chance, by providing a means by which minorities and women won't have to rely on social programs or crime to stay alive, but will be able to stand up and become financially independent. Sure, we have had businesses which provide services and products to the community, but that was on a small basis. We have been purposely overlooked for major business enterprise.

The Small Business Administration provides some opportunities. We heard Deputy Commissioner Bleicki say that. But, when you look at the statistics, White women have benefited more than men and women of color. Because of the restrictive policies of the SBA, qualified minority businesses have been denied the loans they need so badly. The prejudices of our society are institutional. Therefore, nothing to date really addresses the real needs and concerns of minority businesses.

The major reason minority businesses cannot succeed is because they can't get the capital to establish themselves to even get started. In some cases, they also lack the resources and experience. This is new for many of us. Remember, we are not part of the old network. We do not have the experience and know-how to run a business in some cases. The Authority will act as a liaison between the State and minority business. This will ensure the State that a fair proportion of the procurement and set-aside contracts will go to businesses which are 51% owned by minorities. This liaison will also be established with the Department of the Treasury. The Authority will



act as an all-purpose resource center in assisting in the access to loans and grants, preparation of bids for contracts, accounting and management information, as well as technical assistance in reviewing pending legislation which affects minority businesses.

Another benefit of having the Authority is that a minority business will employ, hopefully, more minority persons, not exclusively, of course, but the chances are better for minority employment in a minority-owned business. The offices which might be established under the Authority would also provide jobs. Remember those unemployment statistics I gave you earlier?

No, the Authority will not be a panacea which will correct years of discrimination and biased treatment, but it is an attempt to break the cycle -- the cycle of lack of education and skills; lack of employment; lack of financial independence; and, reliance on social programs. This is one of those mechanisms that can break that cycle of hopelessness, by providing financial independence to those persons who have the skills and abilities to be successful, if given a chance and a little help.

There is an ancient saying, "Give me a fish and I will eat for one day. Teach me to fish and I will feed a family for many lifetimes to come."

We just wanted it on the record that the Coalition of 100 Black Women supports Senate Bill 544 and, of course, you, Senator Lipman. Thank you.

SENATOR LIPMAN: Thank you very much.

ASSEMBLYMAN THOMPSON: For the record, I would just like to address one issue you brought up which I think is very important, and that is crime relating to unemployment. In the State of New Jersey, we spend, on an accelerated basis now because of inflation, approximately, I would say, between \$22,000 and \$28,000 annually to keep an individual incarcerated. At one time, we averaged 8,000 to 9,000 adults incarcerated in penal institutions. That number has gone up. We are now moving at an accelerated rate, and 125 persons a month throughout the State of New Jersey are going through the criminal justice system toward incarceration in Trenton, Clinton, and the other major



institutions. I think that is very important, because that is a cycle that is devastating. I was at a press conference yesterday. Mohammed Ali was supposed to have shown up, but anyway, this conference dealt with the gentleman who is the head of the Boxing Commission. There are some movements in Trenton to try to get rid of him because he has been too successful. We are going to deal with that as another issue. When you get someone in a position and he succeeds-- They never contemplated that Atlantic City would be the major boxing capital of the world; even the casinos never planned for that. Anyway, we intend to stand behind this gentleman, and there will be some public hearings with reference to that situation.

I spoke at a gathering yesterday, and I stated -- and this beautiful gem was put together by a Black entrepreneur -- that I was not interested in any champion coming out of that gym. That is irrelevant as far as I am concerned. However, I think that gym can serve the purpose of taking some of the kids in the City of Newark, taking the hostility out of them, and teaching them discipline and respect so that they can do something to make it in this world. Otherwise, they will fall into the criminal justice system. Once they fall into that, it's about the end. You have to understand that we have kids who have never been in trouble, and they can't get jobs. The ones who have records are just eliminated from the whole system. Thank you.

MS. WHITE-JONES: Thank you.

SENATOR LIPMAN: Thank you very much, Ms. Rebecca White-Jones. The next speaker is right outside the door. He will be coming in any moment. (Mr. Lewis arrives.)

Mr. Lewis, I would just like to say thank you for bringing all the business people from the various counties here today. Although they probably couldn't all stay, I thank you anyway.

JOHN LEWIS: There are two gentlemen here; we had, I think, four or five. There is a gentleman here from Camden County, and one from Ocean County. We had two others here who left; they couldn't stay. So, I will speak on behalf of all of us.



My name is John Lewis. I represent the Ocean County Minority Business Alliance. We are concerned about this bill. It was quite interesting today to hear the different comments, because it helped to enlarge my thoughts, and I'm sure your thoughts were enlarged and broadened also.

SENATOR LIPMAN: Oh, yes. My head is bursting.

MR. LEWIS: I had to rewrite my whole statement, so I have to collect my thoughts to bring it down to about a minute and a half. We support the bill, naturally. It was brought up that the bill should have a means to ensure that the administrators comply with the law in it. I think that is most important, because we have this problem. I know of excellent laws on the books which have been flatly denied. Mr. Bleicki, from the Department of Commerce, mentioned what is being done. I would like to respect what he said, but I would like the record to show that I have positive proof of a gentleman who approached EDA, who had prepared with great diligence for a project in Ocean County. It was singular in importance, and would have been quite lucrative to him. After going through the whole procedure, one of the representatives of EDA flatly denied him without even giving him an answer. He flatly said, "We are just not going to do it," with no excuse. We can supply you with proof. If you challenge me to, I will gladly get date, time, and paper, and the gentleman to testify to that effect.

ASSEMBLYMAN THOMPSON: Would you send it to the Chairwoman when you get that information?

MR. LEWIS: I would be glad to do it, and the gentleman will testify. This bill is needed. I am speaking because I want the record to go -- as I trust it will -- to the full Committee. I don't know what the next step is from here after you go back, but I'm sure you are going to hash it over. What is the next step?

ASSEMBLYMAN THOMPSON: Well, there is an amendment process, and a lot of other things.

MR. LEWIS: Okay. It's a sort of a minute process.

SENATOR LIPMAN: Well, we will put in some of the amendments which have been suggested today. Then, we will hear it in the State



Government Committee, which hopefully will be within the next week or two. Then we will put it before the Senate. That is the procedure. I will be sure that everyone is invited back to testify before the Committee on how much you would like to have this bill when we put it up. That would be maybe about the second week in May.

MR. LEWIS: Okay, that sounds good. Now, I am encouraging everyone here who is left-- I went out with a lot of letters, a lot of communications, and I spent a lot of money on telephones, trying to get the word out. We felt that even if we got a 5% response -- and I did receive about a 5% response -- that would still be good, because we're selling something. The concerned ones will kindle the flame for the others.

We are looking at supporting all of you -- I am assuming that you would not be here if you were not for this bill -- with political action and votes. We are out registering people like mad. We are going to bring this back to Ocean County. I hope that it gets publicized; I just wish we had a trumpet. We would blast it every way we could to get the word out.

On the other hand, I would like to bring up that we are quite weary. I think I am expressing the opinion of many people. We are weary. Some took note that -- as Reverend Eichelberger stated -- in a sense, we are kind of begging for crumbs. The Statue of Liberty is being refurbished now. It states, "Give me your poor." We give honor to the spirit of this country, and we know the spirit of this country is great, but we look at what the reality is. The people here now for which this bill has been prepared-- So many millions of people came under that Statue to this country, looking up in awe, but they never had to endure what we had to endure. Here we are, fighting for what they got long ago, and our fathers went to work for them. I want the record to show this, and I hope that the full Senate will read it, or hear it. That is why I'm saying this; I want it to be known.

ASSEMBLYMAN THOMPSON: As an addendum to that, you have to remember that the Statue came from Europe, and it faces Europe, not Africa. We understand that.



MR. LEWIS: Okay, thank you for that; thank you very much. I have my last little daughter in elementary school. If someone comes to the school and says, "Will you collect money for the Statue of Liberty," we will certainly give money for the Statue of Liberty. But, I am going to qualify that, and tell my daughter the true story. I am going to tell her, "You take your dimes and your little quarters; I'll give them to you, and help you to get them. You can march, too, to raise money to refurbish the Statue of Liberty."

Okay, so much for that. I wanted the record to show that part. Now, the next thing is, I trust the Committee will be unanimous. I hope the Committee will not have any recalcitrant members who, for other reasons, could not care less. I would like the record to show that, essentially, you have us here begging for crumbs. This is a crime; it is an absolute crime. Next, I would like to state that in these times we are living in, you cannot -- if you will allow me to use certain cowboy language -- put your grip around a man's neck and hold him down for 300 years, and then fight internal and external battles overseas and elsewhere, where people are saying, "Yankee go home." You can't keep a grip on me, and then ask me to fight your battles too because you need me. It is as Reverend Lowery of the Southern Christian Leadership said, "We all came on different boats, but we are in the same boat now."

What I am saying to the Legislature, to the full Legislature, and to this Committee -- all members of the Committee present, and those not present-- Hopefully, this bill will go for a full vote. At that point, Senator Connors, Senator Russo, Assemblyman Doyle, Assemblywoman Ford, Assemblyman Hendrickson, Assemblyman Rod -- all of Ocean County -- will have a chance to vote. Of course, we are concerned about Gloucester County and Camden County; we are concerned about all the counties. We have a list of the counties, and we visited some. We intend to get to all of them.

When the legislators have the opportunity to make a decision, I hope they don't think they are doing us a big favor. I thank the Governor for sending the gentleman from the Department of Commerce, and I thank him for his comments. They seem to put quite a few questions



to the legalities of the bill. I think it was Earl Warren who, during the 1960's -- when he was, as I call it, "the Abe Lincoln of the Supreme Court" -- asked the judges, when they argued against civil rights, "Yes, but is it fair?" So, the question is, is it fair? Why bicker and dicker over little legalities, picking the thing apart? Suppose you had invested money in 1777? Suppose you had bought \$10.00 worth of bonds, if the United States issued bonds in 1777? Essentially, 300 years later, or rather 200 years later, the bonds would be worth a great deal of money. Naturally, when you go to turn the bonds in, you would redeem them for the full amount of interest that accrued from those bonds. If you put into it, you expect to get out of it. How is it that we who put blood, sweat, and tears into the foundation of this country, now have to dicker, and come and beg, and cry and moan, just for what the immigrants who came to this country received without any problem at all?

I don't mind being a business person and having normal problems, but I have to bear abnormal problems because of the color of my skin. It might be better, perhaps, if certain segments of our society did not have their optic abilities. That way, they wouldn't have a problem, and they wouldn't make a problem for me. But, unfortunately, we are in a society where people do see, so we have to deal with it. I am asking all the legislators, and I am asking you to convey my message for the benefit of the Ocean County Minority Business Alliance. I hope we can get one in every county to complement the New Jersey United Minority Business Brain Trust, so that they will have an effective network. You cannot do too much without us. The more votes we can get for you, the more people concerned-- We are looking at votes. We feel that the bottom line is getting people out to exercise their right to vote.

This gentleman here is Mr. Odum; he is a dear man from Camden County. He is a unique Black businessman. He and his wife are builders; they actually build developments. He doesn't physically do it; he has done it, but now he directs his operations. He knows how to schedule, how to order, and how to set up a development. He is in the Pinelands. He came to me at your meeting about four months ago -- the



monthly meeting -- and told me that he had a problem in the Pinelands because the Pineland Commission said he had to have five acres. He had bought up some lots. He owns quite a bit of property, as I do. He is a builder. Builders buy property to build houses on -- low-income houses.

I told him the Pineland Commission must comply with the law, and the law is that they must provide each region a fair share of reasonable housing for low and moderate-income people. I told him to go back, because they can't do that. What happened was, the Commissioner went to the Attorney General for a ruling, which was hypocrisy, because the Pineland Commission is not exempt from the law. The Supreme Court clearly dictated this in Mount Laurel II. There is no question about it. Why go to the Attorney General for a ruling? The Attorney General did come back and say, "Yes, Mr. Pineland, you do have to comply. You cannot have exclusionary zoning, estate zoning, quarter-acre lots, half-acre lots, five-acre lots, and so forth." The whole thing is really an exclusionary zoning question.

This gentleman here, who suffered tremendously, is tottering, but we are hoping that he will stand. We will do whatever we can to try to help him. I have land; I am interested in building, and I am aware of the Pinelands. We have modular homes we want to put up. We have land available for modular homes. There is \$2 million right now which has been given to Ocean County for what they call the "Target Area," for low-income housing. They will build the roads, the curbs, and the sidewalks, called the infrastructure, and we just put up the modular homes. This man should know about that, and I would like to introduce him.

SENATOR LIPMAN: Thank you very much, Mr. Lewis, for that presentation. Assemblyman Thompson?

ASSEMBLYMAN THOMPSON: I would like to make one response. I think you brought up a good point. I'm from Essex County, but I follow the results of elections in Ocean County, and other counties throughout the State. I think that if you get together with your group, and petition the people who supposedly represent you in that County, they will vote correctly. I think that is important, because they have had



• some tight races in Ocean County, and, but for the grace of Black participation in the political process, they would have lost, because Hazel Gluck won outright one year before she was appointed by the Governor. They do not have any grip on the party system down there. I think you should let them know that you are very interested in this legislation.

MR. LEWIS: Absolutely. We went to Senator Russo and Senator Connors, who represent both sides of the political spectrum. We gave them the same correspondence. Meanwhile, we are getting people registered like mad. I have young people out working right now. We're moving; we intend to build up momentum. We hope to get our own BLOC, which will make a difference. We have Jewish people, we have Irishmen, we have Hispanics, and we have Blacks. We intend to put them together, by the grace of God. If there are no more than 100 solid voters, it will still mean something. Thank you very much.

One more thing, this gentlemen here with me is from Ocean County.

SENATOR LIPMAN: He said he doesn't want to speak; we already asked him.

MR. LEWIS: He is into data processing, mailing labels and keypunching. He can make a thousand, a hundred thousand, or whatever. He has done State work, but he hasn't been successful yet. His name is Harold Williams.

SENATOR LIPMAN: We'll have to see what we can do about that. Mr. Williams, we really do not have your name on our speakers' list.

MR. WILLIAMS: Well, Mr. Lewis was going to speak, and everyone else here wants to speak. That is why I declined, so they could go ahead.

SENATOR LIPMAN: Mr. Lewis spoke on behalf of everyone. Thank you, Mr. Lewis. The next witness will be Mr. Horace Brown, who is from my neck of the woods. Wait just a minute, Mr. Brown. We just have four speakers left, I think, after Mr. Brown. That will be it. If you gentlemen insist, I will put the lady last, or I could put the lady first. Her name is Verice Mason, and she is from the Public



Advocate's office. (comment from audience) All right, we will go with our four, starting with Mr. Brown.

**HORACE BROWN:** I want to thank God first, for allowing me to be at this historical meeting. Also, I want to thank you, Senator Lipman, and your distinguished panel here for listening to us.

I have been in business for 21 years. I am in the business of office, institutional, and home furniture. I sell what we are sitting on, etc. I would call myself a pigeon flying with eagles. I am in the arena with Sears Roebuck, Gimbels, and J. C. Penney. I am selling the same items that they sell, buying from the same manufacturers, and so forth, so I listen to the same rhetoric, the same bidding process. I grew up to believe in the great American dream, that if you work hard, you know, like the commercial you see, where the stockbroker says, "We get it the old-fashioned way, by hard work"-- When I listen to him, I laugh, because if we Black folks haven't had hard work for the past 300 years or so, I don't know what hard work is.

I have also had the experience of really visualizing what this bill would mean to Black businessmen. I won't speak about all the other aspects involved, because I am not too interested. I am only interested in one area. I have sat in State purchasing departments on bids for hundreds of thousands of dollars. In my beginning years, I listened to how the lowest bidder would get the bid. I have submitted bids where I wasn't the lowest, and I walked away understanding that that was the way the system worked. I wasn't the lowest, so I would try to be the lowest the next time. I'm talking about hundreds of thousands of dollars -- millions of dollars. I have seen the lowest bidder receive a contract, and we all walked away as losers. Then I heard through channels that the lowest bidder did not get the bid, that the bid went to the fourteenth bidder on the list, maybe \$300,000 or \$400,000 higher. That destroyed all credibility, in my opinion, with the bidding procedure.

I sat down with people in the Purchasing Department in our good State here, who had no understanding of what they were doing. I have seen other dealers like myself setting up their game plans for the purchasing people who set up the rules. I attended a bidding process



on Thursday, right here, and they were talking about making a State bid for 18 months. They were talking about furniture, and a question came up from one of the dealers. He asked the purchasing people, "Suppose there is a State contract, and whoever wins the bid does not supply what they bid on?" The gentleman from the Purchasing Department said, "We will call him into the office and speak to him." So, what is the use of bidding? In other words, I could bid a Mercedes. What I am trying to say is, suppose they tell you to bid a Mercedes, so you bid a Mercedes. Then, another guy can come in later on and bid on a Volkswagen, and get the bid. Who is to know?

We need this bill. Black elected officials, we need this bill. We, Black business persons, can't even do business in our own back yards. I am asking you to go back to the others in the Senate and in the Assembly. Just give us 10%; you can have the 90%. That is all we are asking for in order to do business in the Black communities -- the Newarks, the Patersons, the Plainfields. It is disheartening when you go into the city where you were raised, you talk to purchasing people, and they tell you that you cannot bid, that you cannot become a part of the free enterprise system.

We need this bill. We need our elected officials to set the stage. Abraham Lincoln started it; the Federal government kept it going with Public Law 95-507. Now, we need help from the State level. I am in an area, also, where the Black businessman is getting pushed out. Sometime you might call a manufacturer, and he will say, "Unless you can guarantee me so much business in writing, you cannot represent my company." I ask, "Based on the bidding process, how can any company say it is going to guarantee you "X" amount of business, unless something is going on?"

These are the things that we, as Black businessmen, are faced with. We are constantly being shut out. We need this bill; we need your help. If you look around at all the Black cities throughout the State, if you watch what is happening, I'm on my way out.

If you look very hard, you can see what is happening to the Black man here in the urban cities of America. It seems as if we are



being-- I went into business because there were no Black businessmen around. I wondered why all we did was buy. I wondered why we couldn't be retailers. Why did we have to be consumers? Now, what do I see? What I see is disheartening to me. I see Orientals moving into my neighborhood, making up a certain percentage of the population. I look at my children and my grandchildren. What are they going to see? I have nothing against Orientals, nothing, but I cannot imagine myself going over to China or Taiwan and going into business. If you look at our cities --the Newarks, the East Oranges, everywhere -- every time there is a vacant store, you see Orientals coming in. Why? In my opinion, it is because of this great conspiracy on the part of our giant corporations. They are taking all of the industries out of America, and moving them to other countries, and so forth. In return, they are giving our cities to them. Thank you.

SENATOR LIPMAN: Thank you, Mr. Brown. We appreciate your coming today, and waiting us out for so long.

ASSEMBLYMAN THOMPSON: As an addendum to what you said, Mr. Brown, I think they are able to get loans from large institutions that we have never been able to get loans from. One of the things I think is important, not just in Newark, but in other major cities, is that if you try to rent an office, the value of the property remains. The property does not fall in value. They can't just walk in there without money; they are able to get loans. The money is syndicated out of Korea and other places, and through the banking institutions in this country.

MR. BROWN: Assemblyman Thompson, that is why we need this law. We need this law so we can get some money for the people who live in the communities, so they can open businesses themselves. I think it is very unfair. We used to talk about one ethnic group taking all the money out of our communities. What we have done is just exchange one ethnic group for another one which takes the money. We are still growing up with nothing. We are still looking for jobs.

SENATOR LIPMAN: Thank you, Mr. Brown. Mr. Sylvester Fletcher. Oh, wait a minute; I'm sorry. Mr. Fletcher, forgive me. Mr. Foxworth was halfway up because I said he would be next.

MR. FLETCHER: All right, I will be last.



SENATOR LIPMAN: Mr. Larry Foxworth, from the Minority Contractors & Craftsmen's Trade Association.

LARRY G. FOXWORTH: Senator Lipman, members of the Committee: My name is Larry Foxworth. I am the Senior Construction Analyst for the Minority Contractors and Craftsmen's Trade Association. The Association is funded by the Mayor's Policy and Development Office in the City of Newark. The purpose of our Association is to give technical assistance to minority contractors. The Minority Contractors and Craftsmen's Trade Association really supports this bill. We stand behind you, Senator Lipman, because in five years of employment I have seen the games that are being played on minority contractors. I have seen the lies which have gone down. I have seen the finagling and the negotiating. I think this bill will be very helpful to minority contractors, so, by law, they can gain a fair portion of the construction industry as it relates to bidding, as it relates to being able to get bonding, as it relates to being able to get insurance, and, above all, the set-aside.

There is one phase of the bill I must speak on, and that is, once it has been confirmed that a certain portion has been set aside for a minority firm, it is very important that that contract goes to a minority. I have seen, so many times, where the large developers come in and say, "Oh, I can't find a minority to do this," but the minorities are there. We really need this bill to support the minorities who are out there trying to bid on work. Thank you so much.

SENATOR LIPMAN: Thank you, Mr. Foxworth. Now, Mr. Fletcher, did you say you wanted to be last? (affirmative response) I have two more witnesses. May we have Mr. David Brown next? Then we will have the representative from the Public Advocate's office. Ms. Mason, are you speaking as a private citizen, or are you speaking for the Public Advocate?

MS. MASON: I will be speaking for the Public Advocate.

SENATOR LIPMAN: Oh, my. Okay, then why don't we have you first, Mr. Fletcher, after Mr. Brown, and let the State of New Jersey finish it up, unless you are going to give us a short prayer also. (laughter) He is Reverend Fletcher. All right, Mr. Brown.



**DAVID BROWN:** Senator Lipman, members of the Joint Committee: I am David Brown of Rahway, New Jersey, and I wish to address Senate Bill 544, the Minority Business Development Authority Act. As a lifelong resident of New Jersey, I am interested in seeing that the economic system functions for us all, which is why I favor Senate Bill 544, as introduced by Senator Lipman.

I am a graduate of the Woodbridge school system, the Newark Skills Center, and the New York Sales Dynamics Institute. I've been both a partner in the Rahway Shoe Rebuilding business, and Sales Manager for ARA Services, yielding a total of ten years' exposure to the business community.

I am presently a principal in Wilson-Bell Distributors, Inc., located at 737 East Elizabeth Avenue, Linden, New Jersey. Our company has been in existence for better than six years, and provides a variety of nationally-branded janitorial and sanitary supplies, paper products, industrial equipment and machinery, etc.

When I joined Wilson-Bell last year, I brought 15 years sales and managerial experience with me. I've seen that the bulk of our business comes from private industry; we have pursued State contracts, but have obtained none.

For the volume of products which the State requisitions, I feel Wilson-Bell could compete for a larger percentage of the State's business if we had ready access to bonding. For example, often we cannot afford, nor is it in our best interest to tie up capital for certified or secured funds for extended periods of time; thus, we do not apply for many State contracts.

In my view, Senate Bill 544 will assist minority entrepreneurs in solving many of their financial, managerial, and technical problems.

Most of us would agree that the major problem in any business is operating capital. I welcome Senate Bill 544, which would give minority and women-owned and operated businesses the opportunity to finance their business endeavors.

The way for us to learn the best way to establish a solid managerial and technical foundation for an enterprise, is from those



who have traveled these roads before us. I am in favor of the methods outlined in Senate Bill 544, which supports this concept.

I believe the strength of Senate Bill 544 is the governmental functions of the New Jersey Minority Business Authority, which would monitor the set-aside program, holding both the State and the minority contractors accountable, and resulting in a balanced economic scale. This is the best route for minority and small business persons to follow in order to continue to exist.

In conclusion, I speak in support of Senate Bill 544 because I believe it would give those minorities and women who want to share in this country's free enterprise system the opportunity to stay afloat, and sail upon the sea of economic prosperity. New Jersey would be helping itself, and would be an example to the nation, with the passage of this bill.

I am also in favor of what Mr. Brown said, in this way. With the passage of this bill, say, regarding the janitorial and paper products which the State purchases-- They purchase millions of dollars worth of products. Let's say, for example, our company was able to get into the bidding system to receive some of that business. Selling products to the State would help us along as far as dealing with the private structure was concerned, because of the amount of product that would be given, or set-aside that we could possibly bid on. It would help our business, and a great deal. There are a lot of departments which purchase these types of items.

I would like to commend Senator Lipman for giving me avenues and inroads for trying to obtain more business for our company, and we have been successful. I would like to thank her and her colleagues, and request them to continue to fight for us.

SENATOR LIPMAN: Mr. Brown, thank you very much for your comments. You know, there was a gentleman who reported for the Treasurer, who examined closely, line-by-line, all the legal points and technicalities which may be a little wrong with the bill. Tomorrow, he is going to give us a set of his regulations at a seminar, and we can return the favor. He is supposed to explain how the Treasurer intends to go about implementing the small business set-aside, which they are



presently doing. He was the Director of Purchasing for the State of New Jersey. He will be speaking to us tomorrow, so we will have a chance to talk to him.

MR. BROWN: Okay, thank you.

SENATOR LIPMAN: Next will be Ms. Verice Mason.

**VERICE M. MASON:** I am Verice Mason, Assistant Deputy Public Advocate for the New Jersey Department of the Public Advocate. I am here today speaking on behalf of Joseph H. Rodriguez, Public Advocate of the State of New Jersey.

We appreciate the opportunity to come before you today. I am not going to take up much of your time since it is so late in the day. What I am going to do, instead, is give you a copy of our printed testimony.

Briefly, I would just like to say that our Department supports the concept of a permanent State entity to aid in effectuating a positive climate for minority and women-owned businesses. In our testimony, we have outlined in detail some of the unique problems that face minority businesses today. Particularly, our Department has been involved with minority business for quite some time now, because many entrepreneurs have contacted us to explain the nature of the problems they are facing generally, and in terms of contracting with State, Federal, and local governments.

We have taken the time to detail some of the concerns. The major one is certification, and this bill does attempt to address that concern. In our testimony, we highlight the concerns that have been raised about certification, and demonstrate that there is a need for a centralized certification process.

So, I am going to just stop now and say, if you would look over our testimony, it adequately addresses our concerns about this particular legislation. We are willing to work with you in any way you need us to.

SENATOR LIPMAN: Thank you very much. Our Aide, Joe Capalbo, has a question which you may or may not be able to answer. Does the Public Advocate support an authority or a corporation? Maybe I should just put it like that.

MS. MASON: Well, let me say this: We support--



MR. CAPALBO: (interrupting) You used the word "entity."

MS. MASON: Right. We did that purposely.

SENATOR LIPMAN: You ignored the word "authority," so we're asking you--

MS. MASON: (interrupting) Well, the reason is, there are many ways to address the concerns of minority business, and we know there is more than one way in the hopper right now -- in the legislative hopper. The State currently has an office. As a Department, we are not taking a position on what is the best way for the State to handle how they are going to aid minority and women-owned businesses. We think, however, that there must be a permanent State entity, and we are not going to take a position on whether it should be an authority or a corporation, or whatever. We are just glad that the Legislature is beginning to address this issue, but there must be something permanent.

SENATOR LIPMAN: I see in your testimony -- just glancing through it -- that you did point out the fact that liquidation of minority businesses for the lack of proper funding is a large problem. So, that is in here. You did mention it.

MS. MASON: Yes. We received a number of complaints from minority businesses which were experiencing cash flow difficulties because of the failure of prime contractors in these situations to pay them promptly as subcontractors. We have found that the problems minority businesses have raised in that regard are really problems that quite a few minority businesses are experiencing. They get into a situation where they have an extremely high debt structure, because to perform certain contracts they go into debt to get the equipment to do them. Then, when they are not paid promptly, they sustain a series of financial setbacks. Many of them, from the complaints we have received in our office, are then subject to losing their homes, and all kinds of financial difficulties. I think that is relatively indicative of some of the concerns that small minority businesses are facing. As we say, some type of legislation is necessary to address that concern. There should be some type of loan moneys available to them for those difficulties.



SENATOR LIPMAN: I thank you for coming. Please present our thanks to Commissioner Rodriguez, the Public Advocate. We hope to have the opportunity to sit down with you to discuss-- (There is a comment from the audience at this point.) What did you want me to say?

FROM AUDIENCE: Ask about certification.

SENATOR LIPMAN: That was going to be the next word out of my mouth. We would like to sit down with you to discuss the certification process, which you mentioned in your presentation. The registry was also mentioned here. Since you have finished, I understand the Attorney General's office is now working on this certification. Is that where it is? That is what we heard today, from someone who testified.

MS. MASON: In July, 1982, minority entrepreneurs approached our Department and raised their concerns relating to certification. They said they were expending tremendous amounts of money to various certifiers, to be certified as legitimate minority businesses. Many times -- all too often -- they never received a contract. However, their concerns were not merely financial concerns. There was also a concern about the fact that many alleged fronts, that is, sham minority businesses, ones which say they are minority businesses but which really are not, were indeed getting the kinds of contracts that real minority businesses should have been getting.

They also presented us with the information that New York is looking at this issue, because they had found through hearings that many of their state contracts were potentially let to sham businesses. We looked at all the information they presented to us, and we then took up their request that we draft a uniform minority business certification document. We did this, as a Department, and we have turned it over to the Governor for his consideration.

SENATOR LIPMAN: Well, at present -- and I know where I heard this-- Deputy Commissioner Bleicki said they are sending out certain kinds of applications which have built-in certifications now, to determine what companies are minority businesses. They expect to locate 4,000 with this method of certification. Well, actually it is an application, but a certification goes inside the application. They



are certified at the time of application. This is what he announced is being carried out at the moment.

I want to thank you for coming, and for waiting so long. We look forward to working with you.

MS. MASON: Thank you, Senator.

SENATOR LIPMAN: From that I have heard today, I'm sure this bill will need plenty of work. It will just need polishing; the plan -- the idea -- is still the same, but clarification and legal expression are what need to be straightened out. I think that is about it. Thank you again.

Our next witness will be Mr. Sylvester Fletcher, who is a soil scientist. Mr. Fletcher is from the beautiful County of Sussex, is that right?

MR. FLETCHER: That's right.

SENATOR LIPMAN: He is also a member of the New Jersey United Minority Business Brain Trust.

**SYLVESTER J. FLETCHER:** After all that, Senator Lipman knows that I don't need an introduction. To Senator Lipman, and to the empty chairs which held your colleagues -- Assemblymen Thompson, Charles and Zimmer--

SENATOR LIPMAN: (interrupting) They will be back, unless they get stuck.

MR. FLETCHER: My name is Sylvester J. Fletcher. I am a professional soil scientist, and President of Natural Resource Dynamics. My testimony on the need to develop a Minority Business Development Authority represents my opinion and that of Natural Resource Dynamics, Inc. Natural Resource Dynamics is a consulting firm offering professional services in natural resource and resource-related projects. Specifically, our services include resource surveys and analyses, land-use planning, solid and/or liquid waste disposal planning, and others.

The present demand for capital, as well as the high and fluctuating interest rates, cause government, big business, small business, and minority business to compete in the same capital pool for the finances necessary to develop, operate, and expand.



Other forces, such as historic racism, prior discrimination, and the newness of many enterprises, further complicate minority business enterprise opportunities and place most minority businesses at the end of the line, where the acquisition of capital and contracts is concerned.

From my viewpoint, there are two prime constraints on minority business enterprise development. They are a lack of capital formation for business start-up and expansion, and a lack of equal opportunity to bid on and obtain contracts from agencies of government, as well as from corporations.

The above-mentioned constraints overshadow all others in their affect on the growth and development of minority firms within the State of New Jersey.

In some cases, as in my own, the firm may offer new and different services in the private marketplace. Lending agencies, be they local banks, or State sources of financial assistance, are generally unacquainted with the services offered by firms like Natural Resource Dynamics. Federal, State, and local lending agencies are generally unacquainted with the value of the services offered, such as those in the environmental field. Therefore, it is very difficult for a small minority-owned firm to adequately market its capabilities and compete within the present availability of financial resources.

The desire to develop and grow is present among minority firms, as is concern for the welfare of local communities and the State which we serve. Minority firms new to private enterprise often represent new ideas, products, and techniques of operation. However, there is a strong need for assistance from the State Legislature, hopefully for only a short period of time until a company grows large enough to compete on a stronger basis.

This Act, S-544, provides an opportunity for the State to help MBE's in capital formation and other financial assistance, contract procurement, and management assistance.

I believe the passage of this legislation and the development of a Minority Business Development Authority will result in a stronger private enterprise system in New Jersey, and an improvement in the



amount of business and number of jobs created in minority communities throughout the State.

I also believe that a stronger, more active minority business community will have a positive impact on community civic activities and civic life. It is a logical conclusion that where there is a shortage of sound businesses, hence a shortage of business people, the community fabric is weakened and the entire community suffers.

Finally, the MBDA will build bridges of cooperation between "majority-owned and minority-owned" firms, and will result in an overall healthier business climate in the State of New Jersey.

I thank you for the opportunity to submit this testimony, and I strongly recommend the passage of this legislation. Senator Lipman, I thank you, and your colleagues, very much for giving me this opportunity, and I really applaud your patience, your endurance, and all the other qualities you have shown today while listening to what we had to say. Thank you very much.

SENATOR LIPMAN: Mr. Fletcher, I want to thank you for your comments. My colleagues are back now. Assemblyman Thompson and Assemblyman Zimmer, I don't know if you heard enough of Mr. Fletcher's testimony to ask him questions, but would you like to? He is the last witness.

ASSEMBLYMAN THOMPSON: No, thank you.

ASSEMBLYMAN ZIMMER: Thank you for waiting through all of this, Mr. Fletcher.

SENATOR LIPMAN: Well, we started and ended with members of the New Jersey United Minority Business Brain Trust.

MR. FLETCHER: Right. I am a member of the Brain Trust. The other side of me that I didn't mention is Mother Fletcher's Chicken, which was mentioned here earlier today.

SENATOR LIPMAN: We know Mother Fletcher's Chicken; it's very good.

FROM AUDIENCE: He is also a Black citizen from Sussex County. (laughter) That is a rare species.

SENATOR LIPMAN: I think we have had strong evidence here today, a sort of outpouring of support for Senate Bill 544. Someone



said that this was a historic occasion. I sort of agree with him. This is the first time I have actually seen such a united front for any policy. Even if the form is not exactly what should be in this bill, and it must be clarified and refined, the need has been expressed today by many voices and many organizations. There is great support and a great need for such an "entity" -- as the Public Advocate's office has put it -- as the Minority Business Development Authority.

The record will reflect this, and I am sure it will be very helpful when we come to the actual passage of the bill. We will see that all the legislators have a copy of the transcript containing your testimony. We appreciate everyone coming. I also appreciate the assistance of my colleagues from the Assembly. I do not think it is from lack of interest that the other Senators are not here; I think it is just that they couldn't make it today. We have a full schedule these days, with the Joint Appropriations Committee, and so forth.

I hope to see you all again when we hear the bill in the Senate State Government Committee, which I am hoping will be May 14.

FROM AUDIENCE: May I have a list of your members? I have looked through my files, but I do not have that information.

SENATOR LIPMAN: Do you mean the State Government Committee?

FROM AUDIENCE: Yes.

SENATOR LIPMAN: I have a list that you can copy right here. Thank you all. This hearing is adjourned.

(HEARING CONCLUDED)







APPENDIX



APPENDIX



# Jersey climbs in attracting new business

By JOSEPH R. PERONE

New Jersey moved up five notches last year with a manufacturing climate that was ranked 29th out of 48 states, according to a study released this week by Alexander Grant & Co. of Chicago.

New Jersey also had the greatest improvement of any state regarding government-controlled factors that affect business climate, the accounting firm said. Those factors relate to a state's fiscal policies and regulated employment costs. The Garden State was 30th in that category, up from 47th in 1982.

The study ranks the 48 contiguous states in their attractiveness to manufacturers.

"It would appear that the state of New Jersey has made some tremendous efforts to attract business to their state," said Karl Ottolini, a consultant for Alexander Grant.

Kenneth LeFevre, deputy commissioner of the state Department of Commerce and Economic Development, said his office has been "cutting red tape and trying to expedite access to capital" for business since its inception two years ago. "We're no longer an adversary but a cooperative partner" with business, he said.

LeFevre pointed out that New Jersey was ranked 47th in 1979 and has steadily progressed to its No. 29 ranking. Overall, Florida was No. 1 last year and Michigan was 48th, both retaining their 1982 rankings.

New Jersey, however, took the top spot in population density, with 996 people per square mile.

LeFevre mentioned several business coups New Jersey has accomplished against New York and the South. Among those is an expansion by Bankers Trust of New York, which plans to locate its data processing center in Jersey City along with 1,000 employees.

New Jersey also "beat out South Carolina" in persuading Samsung Electronics to build a plant in Roxbury Township, he said. And Ciba-Geigy Corp. of Summit decided to invest in a \$100 million expansion, not in Louisiana or Alabama, but in Toms River, according to LeFevre.

Robert Geary of the New Jersey Business and Industry Association said only Arizona and Nebraska

he said "social insurance costs are improving, tax rates are relatively stable and the labor force is good" in New Jersey. "We're right in the middle of the largest wholesale and retail market in the world," stretching from Boston to Washington.

He said firms that sell computers, computer-related products, office equipment and consumer products are filling up commercial office space in New Jersey, which has shifted from a smokestack to a service-oriented state. Morris and Mercer counties are experiencing the fastest business growth, he said.

Royal Silk Ltd. of Clifton, which sells clothing

said.

Tesler responded that the company only "partially transformed" its business and that "just because we shifted gears. I don't think that's detrimental."

"It became apparent with the resources we had from the public offering that we did not have enough dollars to successfully complete and bring to commercial fruition the devices we set out to develop," Tesler explained. "We had developed some of them in prototype but it became clear that more dollars were required."

The devices were Biopredictor, a computer-controlled instrument that measures the quantity of drugs in blood, and SAFCAD, a computer-controlled intravenous drug delivery system.

"At that point a unique opportunity became available to us," Tesler continued. "We bought MPT (Materials processing Technology Inc. of Paterson), a processing company that lends itself to pharmaceutical manufacturing."

In February, the company "seized upon" another opportunity, to produce stabilized soluble aspirin, which will be made available in injectable form as a new nonnarcotic analgesic.

"We pursued the product because the analgesic market in the United States is \$1.3 billion dollars," said the gastroenterologist. "Tylenol sells \$400 million alone in a market which has had no new products in the 10 years since it was launched."

# Jersey leads in growth of prison population

By RICHARD S. REMINGTON

New Jersey had the fastest growing prison population east of the Mississippi in 1983 as county jails were forced to hold nearly 10 percent of all state inmates due to crowded prisons, according to a federal report.

The number of inmates sentenced to state prison terms in New Jersey increased by 24.6 percent last year, more than four times the national rate, according to the annual report by the U.S. Justice Department's bureau of justice statistics.

New Jersey's growth rate was exceeded nationally only by North Dakota and Alaska. The number of state-sentenced inmates increased from 8,191 in 1982 to 10,209 last year.

State officials attributed the increase in New Jersey to the tougher criminal code enacted in 1979, the effects of mandatory minimum sentences and a speedy trial program.

When questioned about the federal figures, however, the officials warned the statistics can be misleading when comparing penal conditions in New Jersey with other states.

Other states experienced similar large increases in the number of inmates, but prison populations were kept down because of court-ordered jail reductions and early release programs.

Four of the largest state penal systems, Texas, Florida, Michigan and North Carolina, experienced overall declines during 1983.

Corrections Commissioner William Fauver said about half of all in-

mates entering the penal system were sentenced to mandatory terms to be served without eligibility for parole.

Judges have the discretion during sentencing to choose what portion of a prison term must be served without eligibility for parole. In 90 percent of all cases, Fauver said, judges are opting for the maximum provided under the new criminal code.

Gary Stein, director of the Governor's Office of Policy and Planning said another factor in the prison increase has been a speedy trial program instituted during the past three years. "We're processing more cases entering the system and in faster time than we were before," Stein said.

Since Gov. Thomas Kean took office, more than 3,000 new cells have been added to the state penal system and another 1,500 are to be available by the summer of 1986 with the openings of new prisons in Camden and Newark, Stein noted.

"I suspect the judges, where they have discretion (in sentencing), are relieved to know there is jail space available," Stein said. "Whatever the population increase, we're managing it and managing it well."

Fauver said New Jersey since last summer has cut by half the number of state-sentenced inmates held in county jails due to the addition of new prison space. Two 450-bed facilities built of prefabricated modular units were opened at Leesburg State Prison since last summer.

The backup of state-sentenced inmates held in county jails numbered about 700.



EXHIBIT B

# **NJ MBE Data Base - 1983**

1.00	N.J. Small Business	312,816
2.00	N.J. MBEs	16,460 (5%)
2.10	N.J. Black Businesses	11,793 (3.8%)
3.00	N.J. Black Owned Banks	1 (Assets \$27 million)
4.00	N.J. SBA 8(a) Companies	41
5.00	N.J. "Active" MBE Companies	250
6.00	N.J. Brain Trust Membership	45
6.10	N.J. Brain Trust Employment	750
6.20	N.J. Brain Trust Sales	\$40 million
7.00	N.J. MBE Market - CY 1983	\$738 million
7.10	N.J. Federal Agencies - N.J.	\$340 million
	U.S. S.B.A. 8(a)	\$50 million
	U.S. D.O.D.	\$290 million
	Federal Government - other N.J. agencies	undetermined
7.20	N.J. State Government	\$48 million
	Port Authority NY/NJ	\$10 million
	N.J. D.O.T. (PL 97-424)	\$25 million
	N.J. State Government HUD Grants	\$13 million
	N.J. D.E.P. (U.S. E.P.A. Grants)	undetermined
	N.J. State Government total Federal Grants, etc.	undetermined
7.30	N.J. Industries	\$350 million
	N.J. Industries (PL 95-507)	\$350 million
	N.J. Industries total MBE contracting	undetermined
	N.J. Academia, non-profit firms, etc. total Federal Grants	undetermined
8.00	N.J. Minority Population	1,522,849 (20%)
8.10	N.J. Black Population	927,884 (12%)
8.20	N.J. Black Adults (voting age)	587,000
8.30	N.J. Black Adult Voters	287,000 (49%)
9.00	N.J. Minority Unemployed	51,900 (20%)
9.10	N.J. Black Unemployed	32,000
10.00	N.J. Black Inmates	3,681 (59%)
11.00	Projected Sales (1986) of N.J. Brain Trust Members with Effective Compliance to MBE Laws and State Policy	\$200 million
12.00	Estimated Jobs with MBE Growth	35,000

References on page 9.



NEW JERSEY MBE DATA BASE - 1983 (REFERENCES)

- 1-2.1. N.J. Afro-American, Newark, 9/12/81, N.J. State Senator Lipman Data
3. American Banker, 5/27/83
4. SBA-Newark Office, M. McHale, Director, (201)645-2531
5. N.J. Brain Trust estimate
6. N.J. Brain Trust Data
7. N.J. Brain Trust estimate and conclusions: the \$738 million N.J. MBE market is our best estimate based upon available data (7.10, 7.20, 7.30). This estimate is representative of only 25% of the potential N.J. MBE market. We further conclude that of the current \$738 million market, only 10% (\$75 million) is contracted with MBE's.
- 7.11. Ibid, #4
- 7.12. US D.O.D. spent \$2.9 billion in N.J. during FY'82 for goods and services (source - Star Ledger, 7/10/83). Brain Trust projects 10% goal for MBE's (\$290 million).
- 7.21. N.J. Brain Trust CY'83 projection from Port Authority data (N.J. Brain Trust memo to Port Authority, 8/3/83).
- 7.22. Rep. Parren Mitchell's projection for states receiving Surface Transportation Act (PE97-424) grants. CY'83 projection for N.J. D.O.T. (N.J. Brain Trust memo to Boston Federal Executive Board, et al, 7/27/83).
- 7.23. Council of N.J. COstruction Associates (letter to U.S. HUD dated 4/12/83) (Total - \$130 million / Assumption - 10% MBE goal, or \$13 million)
- 7.31. Projected from SBA contract award list, N.J. Brain Trust projections
8. Newark Star Ledger, 3/19/81, 1980 Census
- 8.1-8.3. "Blacks in N.J. - 1982, "N.J.P.P.R.I., pg. 9
- 9-9.1. Ibid, pg. 26
10. Ibid, pg. 28
11. N.J. Brain Trust estimates
12. Jobs developed based upon "rule of thumb" calculation from data source "New Investment Capital for N.J. Small Business," pg. 7, paragraph 4, CSBA, L. Caverly, (609)633-7737  
calculation =  $\frac{\$350 \text{ million} ( * )}{\$10,000/\text{to create one job}} = 35,000$

\* Assumption: minimum of 50% actual procurement (\$350 million) from the current projected MBE market (\$738 million)

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NEW JERSEY's16,400 MBE's \*

47% - SERVICES

16% - CONSTRUCTION

15% - TECHNICAL

11% - MANUFACTURING

11% - SUPPLIERS

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500 N.J. M. B. E.'s \*

TRENTONCAMDEN

\$118 MILLION IN CONTRACTS

\$250 THOUSAND - \$20 MILLION IN SALES

ATLANTIC  
CITY

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References/Notes

1. Estimate for New Jersey Minority Businesses

There is no official data base for minority business in New Jersey Government. The following data is derived from the following sources:

- 1.1 New Jersey Afro-American, 9/12/81, Interview with Senator Lipman
- 1.2. "Blacks in New Jersey - 1980", Black elected State Representatives, 2/80
- 1.3 U.S. Department of Commerce, MBDA, "New Directions, Goals, etc.", 1/82, V. Rivera

<u>A, NJ MBE</u>	<u>NJ SB</u>	<u>SOURCES/COMMENTS</u>
16,450*	312,816**	- Ibid. 1.1
21,320**	386,000**	- Ibid. 1.3, p. 2
7,220**	145,000*	- NJ Dept. of Labor & Industry Division Planning & Research, 609/984-5586. As of 1981 for firms with less than 500 employees with unemployment coverage

\*Source  
\*\*Calculation

NOTE: Based upon Senator Lipman's data the following is the minority company breakdown:

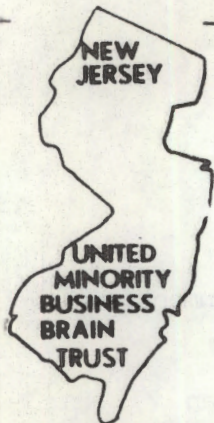
11,793 - Black MBE's, 2,486 Hispanic MBE's, and 2,184 Asian, Indians (others) MBE's

2. 250 - 500 active N.J. MBE's and % estimates - NJBT conclusions.

3/82, Rev. 11/83



EXHIBIT D



1984 URBAN ( MBE ) MARKET SUMMARY

	Total Contracting ( \$ Millions )	Potential to MBE's ( \$ Millions )	Actual TO MBE's ( \$ Millions )	REF.*
FEDERAL	4,000	400 (10%)	80 (2%)	1
STATE	1,000	150 (15%)	5 (1/2%)	2
COUNTIES/ Cities	200	100 (50%)	5 (2.5%)	3
INDUSTRY	???	350	2 (1%)	4
MBE's	4	3.6 (90%)	0.4 (10%)	5
Black Consumer	226	200 (90%)	26 (10%)	6
<u>TOTAL</u>	<u>5,430</u>	<u>1,204</u> (20%)	<u>118</u> (2%)	7
-JOBS -	-217,200 -	-48,160-	-4,720-	8
MINORITY UNEMPLOYMENT		52,000		9

\* References, Page 13.

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REFERENCES - 1984 URBAN ( MBE ) MARKET SUMMARY

NJ Brain Trust ( BT ) data based upon best available public information.

1. \$4 Billion Federal Contracting to NJ based upon " Federal Procurement Data System, 5/81 Report" and updated with public sources, i.e. Star Ledger, 7/10/83.
2. NJBT \$1 Billion NJ Government contracting data based upon meetings with NY/NJ PA, NJDOT, Governor's MBE Council, projections from Federal funds to NJ, i.e.: Surface Transportation Act ( PL 97-424 ), EPA and HUD grants.
3. NJBT projection on County/City Contracting based upon 30% of the following total budgets: Essex County, Newark, Plainfield, Camden, Atlantic City.
4. Total Contracting by NJ Industries is unknown to NJBT. Best estimate based upon NJ SBA data for federal contracts awarded under P1 95-507. NJBT concludes that less than 1% of the sub-contracting by NJ Fortune 500 companies is to MBE's.
5. Projection from NJBT membership experience.
6. NJ Blacks total income from " NJ Public Policy Research Institute 1983 Blacks in NJ, a Statical Abstract ". 10% recycled to Black community from " Black Enterprise - 8/80 ".
7. The totals are assigned a ± 25% accuracy by the NJBT.
8. Jobs provided based upon NJ Economic Development Authority rule " every \$25,000 in contracting provides one job".
9. NJ Minority Unemployment: " NJPPRI, 1982 report".

Additional MBE Data Sources: US MBE Laws NJ Experience and NJ MBE Data Base, Pgs. 26-27, NJBT 1984 Marketing Directory.

11/83

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O.S.B.A. 4/13/84

COMMENTS AND QUESTIONS  
ON S-544

SECTION

5

- d. Administer mbe set-aside program
- e. technical assistance
- f. lend money
- g. guarantee & insure loans
- h. issue bonds
- i.
- j.

k. executive director +

m. other departments

n.

o.

p.

6

- a. loan referral
- b. liaison to treas.
- c. monitor reg. act.
- d. mgt. & tech. assist.
- e. complaints
- f. laws, amendments
- g. pending legislation
- h. central resource
- i. annual report

7

a. procurement set-aside

b. sub-contracts

c. evaluation/goals

O.S.B.A.	O.M.B.E.	S-886 P.L. 1983 Ch. 482	N.J. Treas.	Reg. N.J.	Pending Leg	IAP Comm.	Gov. MBD Council	DCED	OTHER
	x		x					x	
x	x				x				x
					x				
			x						
	x								x
x	x	x				x	x	x	
x	x								
x	x					x	x	x	
x	x								
x	x								
x	x								
x	x								
x	x								
x	/x					x	x	x	
x	x	x	x			x	x		
x	x					x			
						x			

COMMENTS AND REFERENCES

OMBE responsible for MBE procurement programs

N.J. Small Business Development Centers & satellites  
Sources?

Consider actions of Congress which will influence

Fiscal note for salaries, benefits, rent, equip. oper.  
expenses.

Capability exists

Cost

COMMENTS ON

SENATE BILL 544 (LIPMAN)

Key Code

O.S.B.A. - Office of Small Business  
Assistance  
O.M.B.E. - Office of Minority Business  
Enterprise  
IAP Comm. - Inter-Agency Procurement  
Committee  
MBD - Minority Business Development  
DCED - Dept. of Commerce and  
Economic Development

Systems, procedures, certification regulations, etc. now  
being developed for PL 1983 Ch. 482.  
Requires additional systems and certification procedures.  
Requires additional systems, records, personnel, etc.  
" " "



O.S.B.A. 4/13/84

COMMENTS AND QUESTIONS  
ON S-544

## SECTION

7

d.

x

Does this mean MBE means male minority business? Does WBE mean majority and minority WBEs ?

MBE means:

WBE means:

8

x

x

x

x

x

Specific regulations exist for state contracts and for those shared by state and federal governments.

9

a. qualified MBEs

x

x

x

x

x

Required in Treasury, OSBA and OMBE through law, contract, or procurement regulations.

b. inclusion to list

x

x

x

x

x

Requires staff

c. review of list

x

x

x

x

x

c. removal

x

x

x

x

x

x

" " "

d.

x

-15-  
x6

10.

a.

x

x

Is it intended that MBEs be separated from P.L. 1983, Ch 482 ?  
Requires advertising budget.

b. advertising

x

x

11

a. invitation to bid

x

x

MBEs only. Does or does not include women business owners?  
See state regulations and laws regarding acceptance of lowest bidder, etc.

b.

12.

13.

annual reports

x

x

x

x

x

14.

contracting agency

x

Contracting agency under P.L. 1983, Ch. 482 includes established authorities such as the N.J. Turnpike, N.J. Parkway, port authorities and others which operate under previously established laws and reporting responsibilities.

15.

incorrect info.

x

x

x

x

Refers to MBEs does this include women business owners? Which?

19.

120 days

Estimated cost of establishment and operation FY'86 ?



EXHIBIT D

MBE CERTIFICATION COSTS\*

- 1) Approximate total cost to complete the 16 applications - \$5400
- 2) Total man hours - 136 hrs.

Formula: Hours to complete application X \$25/hr (estimated overhead - direct salaries of professional and clerical staff not included)

- 3) Certifications over a three year period:

<u>\$ to complete/total hours</u>	<u>Certifications</u>
\$3000/40	1) SBA 8(a) (\$1000 + \$2000 CPA fee)
\$ 200/8	2) N.Y./N.J. Minority Purchasing Council
\$ 200/8	3) Atlantic City Business Development Center
\$ 100/4	4) Minority Contractors & Craftsman's Trade Association
\$ 200/8	5) Port Authority of N.Y./N.J.
\$ 200/8	6) Tri-State Regional Planning Commission
\$ 200/8	7) Camden County Municipal Authority
\$ 200/8	8) N.Y. City Transit Authority
\$ 100/4	9) N.Y. State Department of the State
\$ 200/8	10) Metropolitan Transportation Authority
\$ 50/2	11) National Minority Business Council
\$ 50/2	12) National Minority Business Campaign
\$ 200/8	13) Conrail
\$ 200/8	14) Southeastern Pennsylvania Transportation Authority
\$ 200/8	15) DOD R&D Program, B.T. Washington Foundation
\$ 100/4	16) Con Edison - Conventional Form

\* Estimated by the N.J. Minority Business Task Force - July 1982



NAME: NATIONAL ASSEMBLY OF BLACK CHURCH ORGANIZATIONS

SLOGAN: "ORGANIZED BLACK CHURCH PEOPLE; LIFTING AS WE CLIMB."

PURPOSE: TO EXPLORE, AFFIRM, AND ENHANCE THE ACCOMPLISHMENTS,  
CAPABILITIES, AND ASPIRATIONS OF BLACK PEOPLE,  
IN THE AREAS OF  
PERSONAL, EDUCATIONAL, ECONOMIC, AND POLITICAL  
DEVELOPMENT

THROUGH DIVINELY INSPIRED, ORGANIZED BLACK CHURCH  
PEOPLE, AIDED BY OTHER CONCERNED, DEDICATED BLACKS



---

# **First National Assembly Of Black Churches**

## **Economics**

**April 4 - 6, 1984**

**The Superdome**

**New Orleans, La.**

---

**BLACK CHURCHES OF AMERICA PUBLICATIONS, INC.  
HACKENSACK, NEW JERSEY 07601**

307 Prospect Avenue, Suite 7F  
201 488 1859

James E. Hurt, Jr.  
National President



# **BLACK CHURCHES IN AMERICA**

**50,000**

**MEMBERSHIPS**

**20,000,000**



# **MACROECONOMICS**

**Analysis**

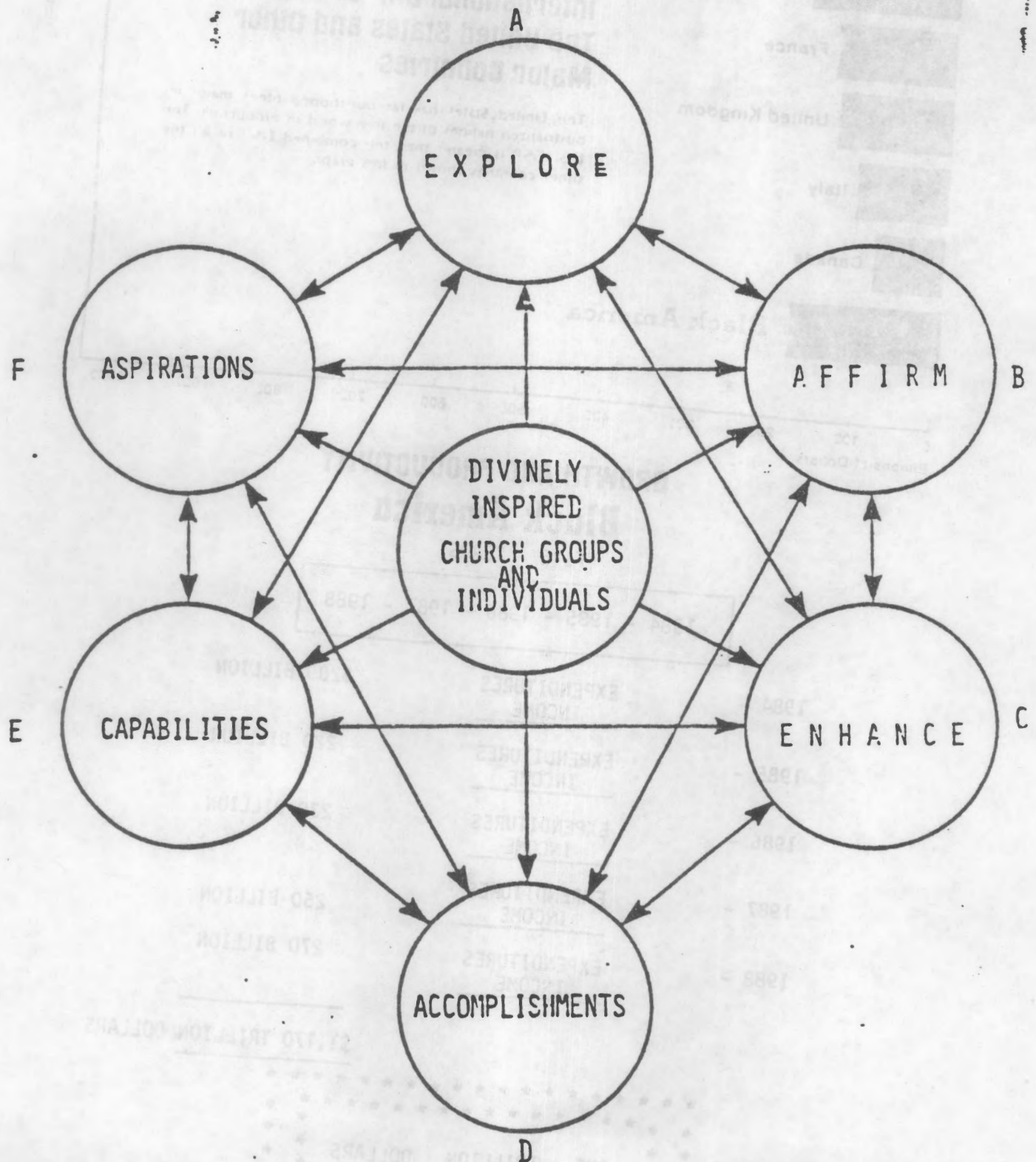
**Nature and Scope of**

**The**

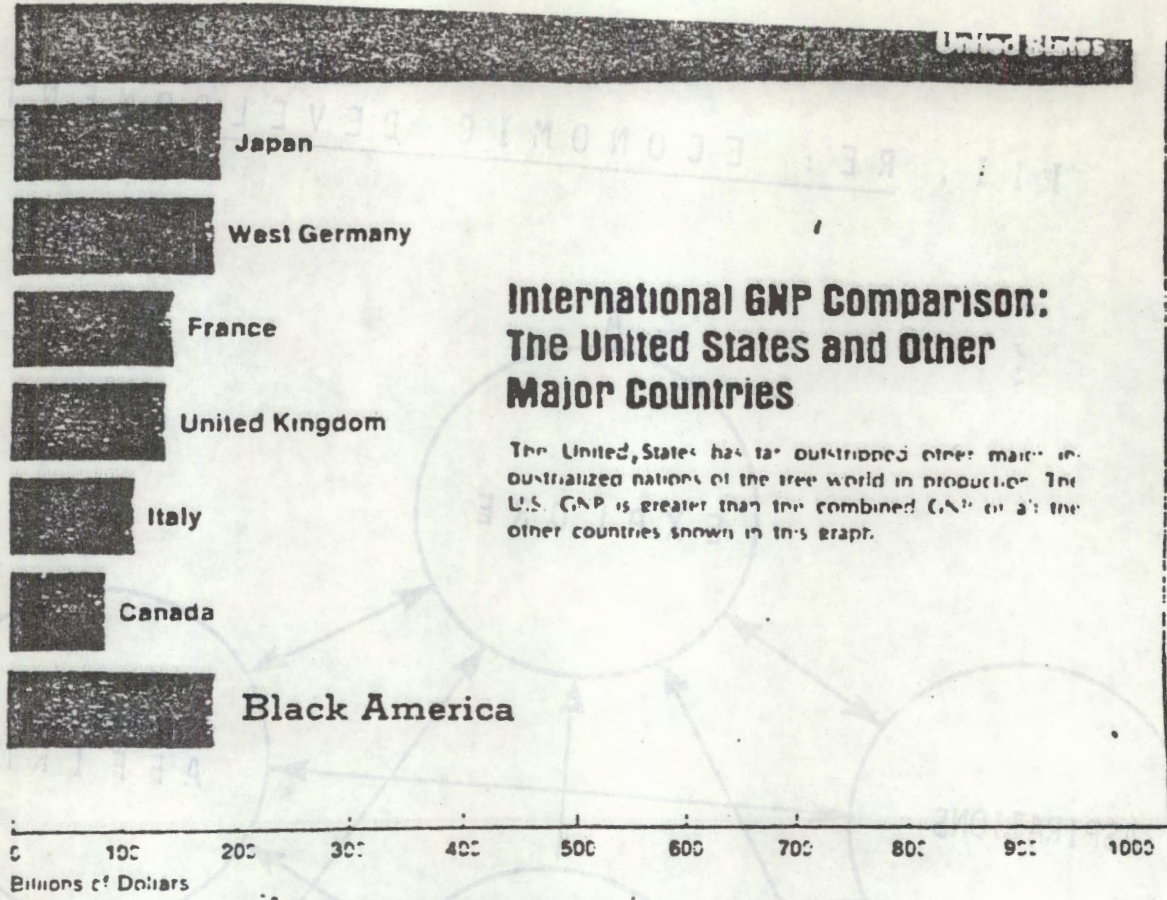
**Black Economy**



### III. RE: ECONOMIC DEVELOPMENT







## International GNP Comparison: The United States and Other Major Countries

The United States has far outstripped other major industrialized nations of the free world in production. The U.S. GNP is greater than the combined GNP of all the other countries shown in this graph.

## GROWTH AND PRODUCTIVITY Black America FIVE YEARS

1984 - 1985 - 1986 - 1987 - 1988

1984 -	EXPENDITURES INCOME	\$200 BILLION
1985 -	EXPENDITURES INCOME	220 BILLION
1986 -	EXPENDITURES INCOME	230 BILLION
1987 -	EXPENDITURES INCOME	250 BILLION
1988 -	EXPENDITURES INCOME	270 BILLION

\$1,170 TRILLION DOLLARS

\*\*\*\*\*  
\* \* \* \* \*  
\* \* \* \* \*  
\* \* \* \* \*  
\* \* \* \* \*  
\* \* \* \* \*  
\* \* \* \* \*  
\* \* \* \* \*

ONE TRILLION DOLLARS

\*\*\*\*\*



## BLACK AMERICA

POPULATION BLACK AMERICA - 28 MILLION

BLACK CHURCHES - 50,000

BLACK CHURCHES - MEMBERSHIP 20,000,000

BLACK GROSS NATIONAL PRODUCTIVITY 1984 -  
200 BILLION

BLACK BUSINESSES - 357,000

BLACK UNEMPLOYMENT - 18%

BLACK TEEN-AGE UNEMPLOYMENT - 30%

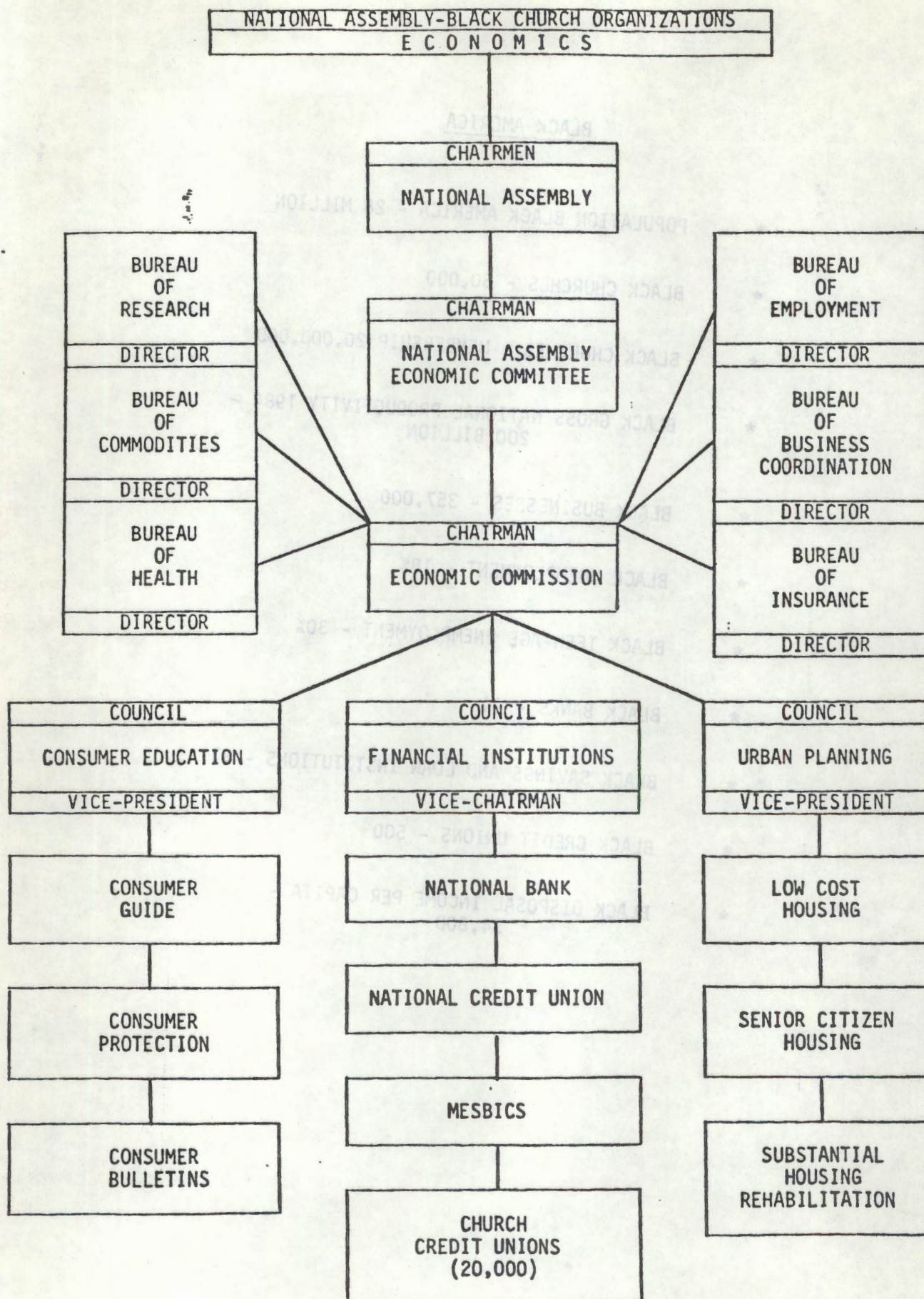
BLACK BANKS - 44

BLACK SAVINGS AND LOAN INSTITUTIONS - 37

BLACK CREDIT UNIONS - 500

BLACK DISPOSAL INCOME PER CAPITA -  
\$4,600







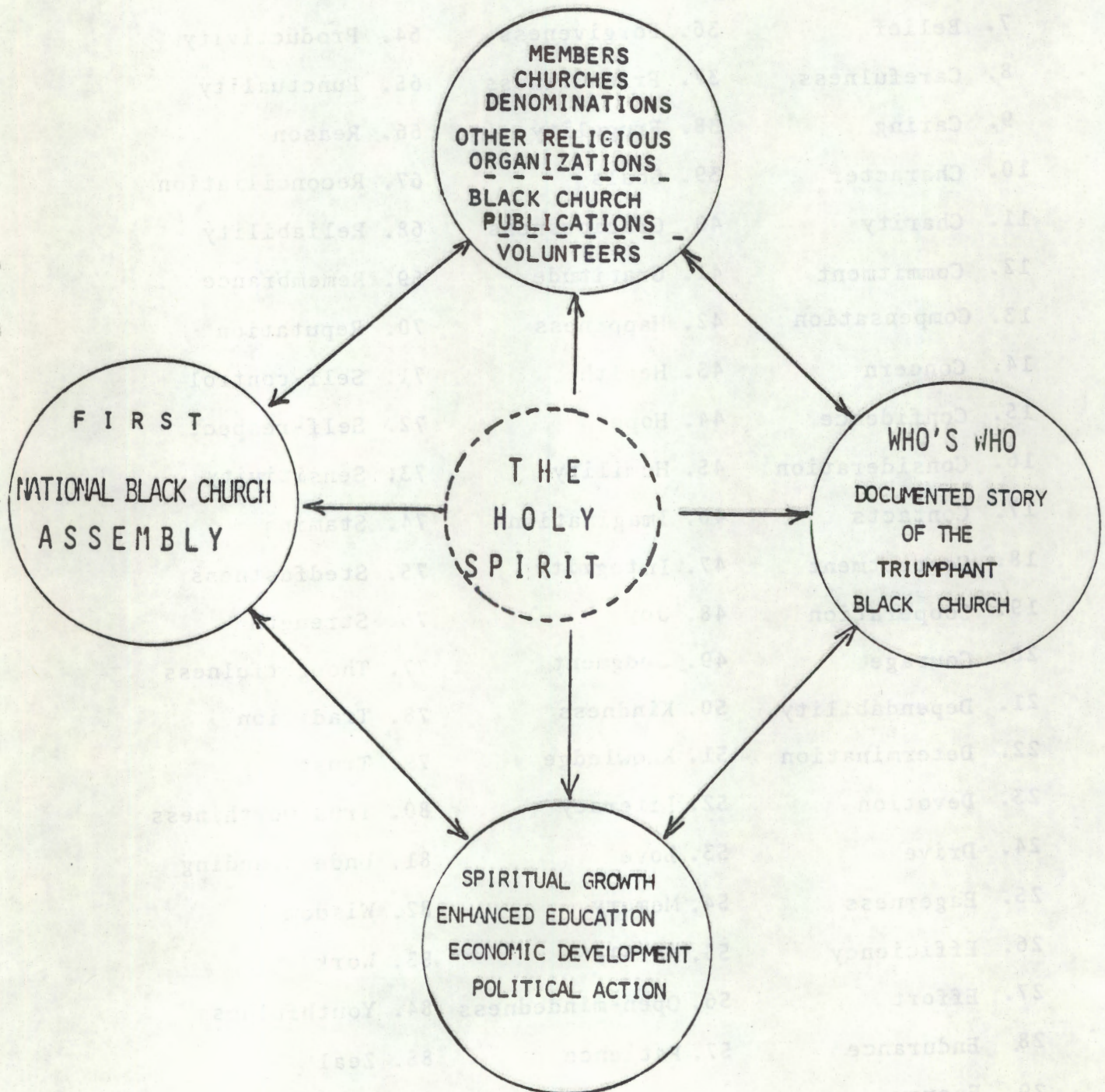
AND UNFRIENDLY POWER CANNOT DESTROY

- |                   |                     |                     |
|-------------------|---------------------|---------------------|
| 1. Adaptability   | 30. Excellence      | 58. Perserverance   |
| 2. Affability     | 31. Expectancy      | 59. Perspective     |
| 3. Affirmation    | 32. Farsightedness  | 60. Philosophy      |
| 4. Ambition       | 33. Faith           | 61. Power           |
| 5. Appreciation   | 34. Fearlessness    | 62. Preparation     |
| 6. Aspiration     | 35. Forbearance     | 63. Pride           |
| 7. Belief         | 36. Forgiveness     | 64. Productivity    |
| 8. Carefulness    | 37. Friendliness    | 65. Punctuality     |
| 9. Caring         | 38. Frugality       | 66. Reason          |
| 10. Character     | 39. Goals           | 67. Reconciliation  |
| 11. Charity       | 40. Graciousness    | 68. Reliability     |
| 12. Commitment    | 41. Gratitude       | 69. Remembrance     |
| 13. Compensation  | 42. Happiness       | 70. Reputation      |
| 14. Concern       | 43. Health          | 71. Self-control    |
| 15. Confidence    | 44. Hope            | 72. Self-respect    |
| 16. Consideration | 45. Humility        | 73. Sensitivity     |
| 17. Contacts      | 46. Imagination     | 74. Stamina         |
| 18. Contentment   | 47. Integrity       | 75. Stedfastness    |
| 19. Cooperation   | 48. Joy             | 76. Strength        |
| 20. Courage       | 49. Judgment        | 77. Thoughtfulness  |
| 21. Dependability | 50. Kindness        | 78. Tradition       |
| 22. Determination | 51. Knowledge       | 79. Trust           |
| 23. Devotion      | 52. Literacy        | 80. Trustworthiness |
| 24. Drive         | 53. Love            | 81. Understanding   |
| 25. Eagerness     | 54. Memory          | 82. Wisdom          |
| 26. Efficiency    | 55. Morale          | 83. Work            |
| 27. Effort        | 56. Open-mindedness | 84. Youthfulness    |
| 28. Endurance     | 57. Patience        | 85. Zeal            |
| 29. Energy        |                     |                     |

hnf  
6-16-82



# AFFIRMING THE RELEVANCE AND POWER OF THE GOD-CENTERED BLACK CHURCH





## GOALS

The National Assembly will explore, promote, and enhance the influence of Church programs with respect to the quality of life of Black Americans. Specific areas to be highlighted are:

- (a) Personal and family development
- (b) Educational development
- (c) Economic development at group, institutional, and personal levels.
- (d) Political development.

The Assembly will develop an exchange of experiences among participating churches with regard to ongoing programs in these several areas. The various participating denominational groups will each be encouraged to specialize in one or more of the above areas of service and to share their experiences and results with other groups. The Assembly's central office will facilitate the distribution of such progress reports among the Assembly participants, in the course of preparations for a Second National Assembly in 1985.

Another beneficial outcome of the Assembly will be the dramatic demonstration of togetherness among Black Church people that it will provide. It will evidence a welcome readiness and ability to solve many of our problems ourselves, with God's help.

The WHO'S WHO volumes will produce widely useable, handy records of Black Church organizations that should be informative and inspirational for many segments of U.S. society. The first volume will feature individual churches, their pastors and principal officers, with photos. Other material will include the age, property value, and service programs of each church. The volume will also carry impressive facts about the programs and officers of the various Denominational organizations, and Colleges that they support.

The second WHO'S WHO volume will feature officers of the various organizations within individual churches. This will provide a dramatic account of the hundreds of thousands of lay persons who implement various church programs.





# MINORITY CONTRACTORS & CRAFTSMEN'S TRADE ASS'N

*A Division of New Hope Development Corp.*

THURMAN SMITH  
Executive Director

119 SUSSEX AVENUE  
Newark, New Jersey  
201 624-0178

April 27, 1984

Good Morning!

I am Larry Foxworth, Senior Analyst of the Minority Contractors and Craftsmens Trade Association, commonly known as MCCTA. I am here this morning as the official representative of my Agency and the minority contractors we serve to present our testimony on behalf of Senate Bill #544.

The Minority Contractors and Craftsmens Trade Association is a non-profit organization located at 111-119 Sussex Ave., Newark, N.J., and funded by the Mayor's Policy and Development Office. The purpose of our Association is to substantially increase the dollar volume of contracts received by MBE's in the greater Newark area, and throughout the State. Our main objective is to provide ways and means for MBE's to participate more effectively in the construction industry.

It is our intent to supply the minority contractor with all the clerical, managerial, and technical assistance he will need in his efforts to compete in the construction industry marketplace. We further provide him with the services he needs to present himself and his business in a professional and proficient manner. MCCTA does quantity take-offs, works out cost estimates, and



draws up proposals for the contractors. We also assist him in reading and interpreting drawings and specifications and other contractual documents. MCCTA maintains a library of code reference books, trade handbooks, manufacturers catalogs, and other literature of immediate interest to contractors. In our capacity as the City of Newark's official minority contractor assistance center, we collect and disseminate information to contractors about construction projects. The information is contrived from many sources such as the Brown's Letters Publications, and public agencies such as the New York & New Jersey Port Authority, the City of Newark, The Board of Education, Newark Housing Authority, and other agencies who set aside work for MBE's. With the passage of City Ordinance #6S-FM11017, which assures a 25% minority participation on tax abated, land lease, and urban development projects to MBE's, MCCTA has been designated by the Newark Human Rights Commission as the agency responsible for maximum MBE participation. Recently, MCCTA has been mandated by the City of Newark's Construction Review Council to certify all minority firms. Due to the massive build-up in the construction field and to eliminate minorities "fronting" for majorities, it has become necessary for our Agency to do an in-depth investigation into the true status of an MBE and only then to certify that MBE.

Because of the close working relationship MCCTA has with the minority contractors in the greater Newark area, we are extremely cognizant of the financial problems he is faced with on a daily basis. We all know the story of how you can get a loan at the bank if you have collateral equal to, or more than the loan you are applying for. Historically, minorities have been deprived of the opportunity to gain the kinds of collateral the banks require as security. This



fact is well known, which is one of the reasons we are gathered here today. MCCTA views Senate Bill #544 as an effective vehicle to help offset some of the financial problems minorities are confronted with, and to insure commerce and economic development which will in turn help minority businesses grow and expand.

The establishment of a New Jersey Minority Business Development Authority, would aid the minority businesses that heretofore have not had an opportunity to participate in the free enterprise system, due to lack of available funds. There is a great need for an agency that is backed by the Legislature to provide some ways that will allow minority businesses to participate more effectively. The lack of financial assistance has long been a handicap to minority group members. The passage of the Bill, and subsequent establishment of the Authority will provide incentives and encourage the development of more new minority business enterprises. Making available reliable resource information will enable minority businesses to become more independent and operate in a manner whereby they can establish bonding, inventory control and lines of credit which have historically been a disaster for MBE's.

Once the Bill is passed, MCCTA would like intense thought and consideration given to the location of the Authority's offices. We feel strongly that location and availability are key issues, as it relates to making the offices readily available to those who need them most; minorities in minority neighborhoods. The best intentions in the world can become useless, if the product being offered is unattainable and put out of reach of the very persons for whom it was intended to help.

The strong points of the Bill are those that would assure that



the minority group ownership interests are real and continuing and not created solely to meet MBE requirements, and the establishment of set-asides of at least 15% for MBE's and 10% for minority businesses owned by women. Another strong point deals with the issue of when a contract is confirmed as a set-aside for MBE's, bids from other bidders are rejected, and if the Authority and the contracting agency cannot reach agreement as to the designation of an MBE set-aside contract, the contracting agency shall submit the matter to the State Treasurer for a final determination. This will help eliminate agencies using that old cliché, "I can't find any minorities to do the work." The selection of minorities and women to the New Jersey Minority Business Development Authority is viewed by MCCTA as another strong point of this bill.

In conclusion, The Minority Contractors and Craftsmens Trade Association feel that Bill #544 reflects a sincere concern for the financial plight of the minority contractor and takes great strides to effect its enhancement.

We wish to go on record that MCCTA wholeheartedly supports and strongly urges the passage of Bill #544.

Thank you.



the minority group ownership interests are real and continuing and not created solely to meet MBE requirements, and the establishment of set-asides of at least 5% for MBE's and 10% for minority businesses owned by women. Another strong point deals with the issue of when a contract is confirmed as a set-aside for MBE's, bids from other bidders are rejected, and if the Authority and the contracting agency cannot reach agreement as to the designation of an MBE set-aside contract, the contracting agency shall submit the matter to the State Treasurer for a final determination. This will help eliminate agencies who say, "I can't find any

**COMMENTS OF THE  
NEW JERSEY DEPARTMENT OF THE PUBLIC ADVOCATE  
ON S-544, THE NEW JERSEY MINORITY BUSINESS  
DEVELOPMENT AUTHORITY ACT**

In conclusion, The Minority Contractors and Crafters Trade Association feel that Bill 5544 reflects a sincere concern for the financial plight of the minority contractor and takes great strides to effect its enhancement. We wish to go on record that MCCTA wholeheartedly supports and strongly urges the passage of Bill 5544.

Thank you.

**JOSEPH H. RODRIGUEZ  
PUBLIC ADVOCATE OF NEW JERSEY  
BY: VERICE M. MASON  
ASSISTANT DEPUTY PUBLIC ADVOCATE**



The Department of the Public Advocate welcomes this opportunity to speak before you today on the issue of State assistance to minority and women-owned businesses. We wholeheartedly support the concept of a permanent State entity to aid in effectuating a positive climate for minority and women-owned businesses. We wish to speak today on the problems facing minority businesses so that this Committee may fully understand the need for a prompt response by the Legislature to these concerns. Over the past two and a half years our Department has received a host of complaints from minority businesses detailing problems in obtaining certification as a legitimate minority business and the barriers to obtaining State contracts confronted by these businesses.

The State of New Jersey is just beginning to compile its own statistics on the number of minority business enterprises (MBEs) existing in this State. According to the latest U.S. Economic Census, there are 11,793 minority businesses in New Jersey with gross receipts of \$464,478,000 employing 5,747 people.\* Minority businesses in New Jersey are concentrated largely in service areas, retail trade and in industries relating to transportation and public utilities. Because the total number of minority businesses grew by 31 percent since the last economic census, it is likely that the number of minority businesses in New Jersey have increased since this survey was taken in 1977. However, the extent of the growth in the number of minority businesses is difficult to project because minority businesses suffer from a unique set of problems.

Traditionally, minority businesses have suffered from a low participation rate in our economy. On a national level, minority businesses account for 5.7 percent of the total number of sole proprietorships, partnerships

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\* 1977 Survey of Minority-Owned Business Enterprises, Bureau of Census, U.S. Department of Commerce.



and small business corporations in this country, and and they represent 3.5 percent of their gross receipts. According to the U.S. Department of Commerce's Minority Business Development Agency, minority businesses experience a low participation rate for three reasons:\*

- (1) They have low business formation rates;
- (2) They have low business growth rates; and
- (3) They have high business failure rates.

This bill, S-544, attempts to remedy these traditional problems by providing the managerial and technical expertise and loan monies needed for capital formation and growth.

The low business formation rate of minority businesses is due to a host of factors. Minority businesses lack appropriate role models and generally are not as skilled in the business area as their majority counterparts. They usually have limited seed capital with which to begin a business, as the significantly lower wealth levels of minority groups dictate that on the average, little seed capital is available from personal or family assets to support the earlier stages of business development (i.e., research and development, start up, early growth stages). Lastly, the low formation rate is also attributed to restrictions on business opportunities for minorities, usually in the form of unwritten social prejudices.

Once a minority business begins to operate, the business cannot usually sustain accelerating growth unless capital becomes available in significant quantities during the growth stages. These growth stages are a time of considerable risks for minority entrepreneurs. Yet, this is the time when social prejudices unnecessarily and improperly restrict needed resources.

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\* "Minority Business Enterprise Today: Problems and Their Causes" prepared by Research Division, Minority Business Development Agency, U.S. Department of Commerce, January 1982.



Suppliers restrict materials and trade credit to minority businesses because they believe minorities cannot be trusted. Bankers are reluctant to loan money to minorities without ironclad guarantees of repayment. Although many small businesses face similar problems, they are not required to contend with these problems to the degree experienced by minority firms.

The last reason that minority businesses have traditionally suffered from a low participation rate in our economy is that they experience a higher percentage of business failures. Data collected by the Federal Minority Business Development Agency demonstrates a pattern of failure among minority businesses at least 2 to 4 times higher than those of majority firms.\* Minority businesses are generally burdened by a higher debt structure resulting in liquidity problems, especially during recessions and tight money periods. Our Department has received numerous requests for assistance from minority businesses facing severe cash-flow problems caused by the failure to be promptly paid for work performed or services rendered. The dilemma of these minority firms is exacerbated by the fact that they usually have borrowed money to buy materials necessary to complete the contract. Thus, the impact of a high debt structure and severe cash-flow shortage operates to impede many minority businesses. In addition, a study on business failures and formations conducted by David Birch, at the Massachusetts Institute of Technology, also demonstrates that the small size of minority businesses generally increases their risk of failure, as it appears that companies with 100 or more employees are the greatest defense against business failure.\*\*

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\* Id. at 17.

\*\* "Corporate Evolution: A Micro-Based Analysis," prepared by David Birch and Susan MacCracker, U.S. Small Business Administration, January 1981.



As stated above, our Department has received complaints from minority businesses reflecting some of the problems which we have outlined here today as indigenous to the minority business community. Legislation must provide the necessary tools to remedy these problems - technical expertise, loan monies and facilitation of contracting opportunities.

With regard to the latter, the area of greatest concern in the complaints received by our Department is the issue of certification of minority businesses. The process of certification of legitimate minority businesses is a problem facing federal, state and local governments who are interested in minority business development. Currently, aid to minority business is structured in such a piecemeal fashion that minority entrepreneurs are required to become familiar with a variety of minority business certifiers administering different minority business programs for federal, state, local and quasi-public entities. Minority businesses are often required to expend over \$5,000 per year to become certified with all of the various certifiers in the New York/New Jersey area. This is both time consuming and costly. The concept of a centralized certifier, which this bill provides, is one which we strongly support, as it familiarizes state contracting agencies with the services and products provided by legitimate and qualified minority businesses. This can only serve to facilitate the ability of the State to contract with minority businesses and increase the ability of these businesses to share in the improved economic climate.

Lastly, any legislation attempting to remedy the concerns which we have outlined here today should delete women from the definition of a minority business and permit a separate definition for minority businesses and women-owned businesses. While we support aid for women-owned businesses, the general trend around the country is to treat these businesses separately. In addition, it facilitates the separate reporting of the State's



progress toward aiding the growth of minority and women-owned businesses. Moreover, any legislation defining a minority business should include both ownership and management control as determinants of a "true" minority business. We, therefore, suggest that a minority business enterprise be defined as a business at least 51 percent of which is owned and controlled by minority group members.

In sum, the Department of the Public Advocate expresses its support for the concept of a permanent state entity to aid minority and women-owned businesses and to remedy some of the unique problems which they now face. We hope that our comments today have shed some light on the unique kinds of problems experienced by minority businesses. We appreciate your time and attention.

Thank you.





GENERAL ASSEMBLY  
OF NEW JERSEY  
TRENTON

WAYNE R. BRYANT, ESQ.  
ASSEMBLYMAN, DISTRICT 5 (CAMDEN-GLOUCESTER)  
309 MARKET ST., SUITE 302  
CAMDEN, N.J. 08102  
TEL. 609-757-0552 (DO)

April 25, 1984

Senator Wynona M. Lipman  
50 Park Place  
Newark, New Jersey 07102

Dear Senator Lipman:

I am writing to commend you and offer my unequivocal support of S-544, which would establish the New Jersey Minority Business Development Authority and designate certain state purchases as Minority Business Set-Asides.

The fate of our state's urban minority communities is inextricably intertwined with the growth of minority business. Empirical studies have confirmed that minority businesses hire primarily minority employees. The growth and economic development within minority communities increases the prosperity of the state as a whole by reducing the state burden of unemployment, welfare and other supportive social services. Yet, the growth of minority businesses has been slow.

The fact that discrimination is one of the major elements which lead to social disadvantage is well documented. In the case of women and minorities seeking entrance into the economic mainstream, the disadvantage is usually manifested by an overall lack of business know how. For those who have the capacity to overcome the disadvantage, the obstacles persist because they are continually perceived by the greater business community as incompetent and lacking credibility. Even today, women and minorities are viewed primarily as consumers and tangentially, if at all, as producers and suppliers.

This bill attempts to address those problems by requiring the state contracting agencies to set as a goal 15% of their total procurement dollars to be set-aside for minority business and that 10% be set-aside for women. I believe this



legislation, once enacted, will serve as the necessary impetus for state government to utilize more goods and services provided by companies owned by women and minorities.

Again, I want to commend you on this legislation. You can be confident of my active support of S-544.

Yours in humanity,

*Wayne B. Bryant*  
Wayne B. Bryant

/mdm

cc: Members of the Senate and Assembly State Government  
Committees  
Black Caucus Members  
Joseph P. Capalbo, Committee Aide  
Donald S. Margeson, Committee Aide



# *St. Mark's A.M.E. Church*

587 Springdale Avenue  
East Orange, New Jersey 07017  
Telephone (201) 674-5859

ARTHUR S. JONES  
Pastor

RE: Testimony before the joint legislative hearing on the Minority Business Development Authority Act (S 544), New Jersey State Legislature.

GOOD MORNING. MY NAME IS ARTHUR S. JONES. I LIVE AT 555 MT. PROSPECT AVE., NEWARK, N.J. I AM PASTOR OF THE ST. MARKS A.M.E. CHURCH, EAST ORANGE, NEW JERSEY. I COME TODAY, HOWEVER, AS THE REPRESENTATIVE ON SOCIAL CONCERNS OF THE N.J. CONFERENCE OF THE AFRICAN METHODIST CHURCH. OURS IS THE OLDEST BLACK DENOMINATION IN THE UNITED STATES, DATING BACK TO THE YEAR 1787. THE A.M.E. CHURCH IN N.J. CONSISTS OF 102 CONGREGATIONS AND 85,000 MEMBERS. WORLDWIDE, OUR DENOMINATION HAS 2.1 MILLION MEMBERS IN THE U.S. AND 40 FORIEGN COUNTRIES.

I HAVE ALSO BEEN AUTHORIZED BY REV. WILLIAM E. KELLY, N.J. REPRESENTATIVE OF THE BISHOP OF THE N.J. CONFERENCE OF THE AFRICAN METHODIST EPISCOPAL ZION CHURCH, AN ORGANIZATION OF 44 CONGREGATIONS AND MORE THAN 40,000 MEMBERS, TO ASSOCIATE THE A.M.E.Z. CHURCH WITH MY STATEMENT. THE A.M.E. ZION CHURCH OPERATES THROUGHOUT THE UNITED STATES AND IN 28 FORIEGN COUNTRIES. IT HAS 1.8 MILLION MEMBERS WORLDWIDE.

THE A.M.E. CHURCH WAS FOUNDED ON THE CONCEPT THAT IF THE BLACK COMMUNITY WAS TO ACHIEVE FULLEQUALITY AND FIRST CLASS CITIZENSHIP IN OUR AMERICAN SOCIETY, SELF-HELP WAS THE BEST ROUTE TO TRAVEL TO THAT GOAL. WE HAVE THEREFORE, BEEN STRONG ADVOCATES OF MINORITY BUSINESS DEVELOPMENT ACROSS ALL THE YEARS OF OUR EXISTENCE.

WE COMMEND SENATOR WYNOMA LIPMAN FOR INTRODUCING BILL S 544. THE A.M.E. CHURCH STRONGLY SUPPORTS THE BILL AND URGES ITS ENACTMENT INTO LAW.

THAT THERE HAS HISTORICALLY BEEN DISCRIMINATION AGAINST MINORTIY BUSINESS ENTERPRISES IN OUR SOCIETY CANNOT BE DENIED. BLACKS AND OTHER MINORITIES HAVE NOT RECIEVED A FAIR SHARE OF CONTRACTS FROM ANY LEVEL OF GOVERNMENT, WHETHER MUNICIPAL, STATE OR FEDERAL. IN ADDITION, BECAUSE OF RACIST ATTITUDES AND PRACTICES, THE



APPROPRIATE FINANCING AND BONDING SO NECESSARY TO SUCCESSFUL BUSINESS ENTERPRISES, HAVE BEEN EXTREMELY DIFFICULT TO ACQUIRE. ALSO, BECAUSE OF THE LONG EXCLUSION OF MINORITIES FROM MANY AREAS OF BUSINESS ENTERPRISE, THEY HAVE BEEN UNABLE TO ACQUIRE EITHER THE TECHNICAL EXPERTISE OF THE EXPERIENCE ESSENTIAL TO SUCCESSFUL ENTREPRENEURSHIP.

IN VIEW OF THE ABOVE, IT SEEMS TO US THAT THE ESTABLISHMENT OF A MINORITY BUSINESS DEVELOPMENT AUTHORITY WOULD REPRESENT A SIGNIFICANT STEP FORWARD IN ELIMINATING PAST INEQUITIES AND IN OPENING THE WAY FOR MINORITY ENTREPRENEURS TO ENTER THE MAINSTREAM OF THE PRIVATE BUSINESS SECTOR OF OUR STATE. SUCH AN AUTHORITY, VESTED WITH THE POWERS AND FUNCTIONS SET FORTH IN S 544 WOULD REPRESENT CONTINUING, STATUTORY REMEDIES TO THIS PROBLEM AS OPPOSED TO THE PIECE-MEAL APPROACH THAT HAS BEEN SO INEFFECTIVE IN THE PAST.

WE ARE PARTICULARLY PLEASED WITH THOSE PORTIONS OF THE BILL THAT ENABLE THE AUTHORITY TO:

- PG 5, SEC. 3-4 "ESTABLISH A LOAN REFERRAL PROGRAM FOR MINORITY BUSINESS ENTERPRISES."
- PG 5, SEC. 14-16 "-----COORDINATE MANAGERIAL AND TECHNICAL ASSISTANCE IN A SYSTEMATIC MANNER TO MINORITY ENTERPRISES AND MINORITY GROUP MEMBERS AND WOMEN DESIROUS OF STARTING BUSINESS ENTERPRISES."
- PG 6, SEC. 21-23 "RECEIVE COMPLAINTS OF OPERATORS OF MINORITY BUSINESS ENTERPRISES AND REFER THEM TO THE APPROPRIATE FEDERAL, STATE AND LOCAL AGENCY FOR APPROPRIATE ACTION ON THE COMPLAINT."
- PG 6, SEC. 1-5 ESTABLISH "THE GOAL THAT CONTRACTING AGENCIES SET ASIDE AT LEAST 15% OF THEIR TOTAL PROCUREMENTS FOR MINORITY BUSINESS ENTERPRISES OWNED BY MINORITY GROUP MEMBERS AND AT LEAST 10% OF THEIR TOTAL PROCUREMENTS FOR MINORITY BUSINESS ENTERPRISES OWNED BY WOMEN."

WE ARE ALSO PLEASED BY THE SANCTIONS SET FORTH AGAINST CONTRACTING AGENCIES OF THE STATE WHO FAIL TO MAKE A GOOD FAITH EFFORT TO MEET THE SET ASIDE REQUIREMENTS.

MR. CHAIRMAN, THE AFRICAN METHODIST EPISCOPAL CHURCH OF NEW JERSEY FIRMLY BELIEVES THAT THE ADOPTION OF S 544 WILL DEMONSTRATE TO ALL THE CITIZENS OF NEW JERSEY



THAT OUR STATE IS MAKING A SERIOUS COMMITMENT TO EQUALITY AND JUSTICE FOR THE  
MINORITY MEMBERS OF OUR SOCIETY.





## SMALL MICRO SYSTEMS, INC.

18 East Centre Street, Woodbury, NJ 08096 (609) 853-1616

April 27, 1984

### WRITTEN OUTLINE

#### COMPANY OVERVIEW

Small Micro Systems, Inc. is a privately held company incorporated in the state of New Jersey. One hundred shares of stock have been issued by the corporation. Mr. Melvin N. Allen is president and co-founder of the company.

Small Micro sells software consulting services and micro based computer systems to targeted vertically integrated markets. The markets are composed of professional and government organizations predefined and selected within the Delaware Valley area.

The company is beginning the second year of operation as of May and is the second company of this type founded by the president.

#### BUSINESS CONTRACTS (PRIMARY SOURCES)

The primary source of contracts was and is based on the initial marketing plan to include small businesses and service organizations. However, currently, the company is managing a large contract for Public Service Electric and Gas Nuclear Plant. It is hoped this project will expand nationally in scope and become sanctioned by such agencies as the "Nuclear Regulatory Commission."

The second objective of the business plan is to procure state and federal contracts. Results have been limited for the following reasons:

- . Little experience in bidding.
- . Bonding and Financing Requirements.
- . Excess amount of time needed to prepare bids.
- . Concerns about the length of time it takes to receive payment for services rendered.
- . Excessive time it takes to become known and accepted as a certified business.
- . Low rate of return on contracts.



## GETTING FINANCIAL AID/BUSINESS EXPERIENCE

Small Micro's experiences in getting financial aid required reams of paperwork and hours of time. Likewise, problems included factors such as little equity, past credit experience and time delay that required great patience.

Currently, Small Micro is experiencing a tremendous increase in business and the need to expand. But, because of the delays in obtaining expansion money, it is woefully under capitalized and is threatened by the very fact it is rapidly growing! Although this is not unusual for any small growing business, the problem magnifies itself when put in the perspective of a minority venture and thus becomes a monumental effort to obtain new money.

In short, the business is putting itself out of business because it is getting business and doesn't have the ability to adequately finance it self to continue to grow.

## II. PERSONAL PERSPECTIVE ON THE BILL

The bill can act as an economic advocate. That is, it will provide a source of credit backing, a clearing house for procedure on state bidding and a way for minority business to get equity.

The can act as a credit backing for a minority company; this will give the business a chance to survive economically and thus take hold and become independent quickly.

Obviously, a 15% set aside will provide incentive for minorities to bid. But, I believe the bill will provide a greater incentive through its information and referral capabilities and its credit extension possibilities.

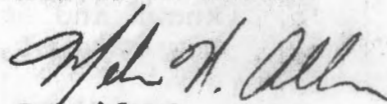
## III. SUMMARY

Economically, small businesses represent the bulk of new jobs created annually in this nation. And if the minority community is to become economically strong, it must have a viable, growing, and adequately financed small minority business community to do this.

We want to be economically independent. We don't want to be children of the state. This bill represents the beginning of a state supported approach towards doing that.

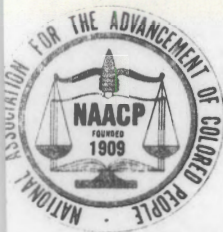
I urge you to support and approve this legislation. Thank you.

Melvin N. Allen



President  
Small Micro Systems, Inc.





**NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE**

186 REMSEN STREET • BROOKLYN, NEW YORK 11201 • (212) 858-0800



1909 — 1984

BENJAMIN L. HOOKS  
Executive Director

April 23, 1984

Mr. Joseph Capalbo  
Senate State Government Committee  
State House Annex  
Trenton, NJ 08625

Dear Mr. Capalbo:

Pursuant to our telephone conversation of April 23, 1984, enclosed please find my written testimony in support of S-544 "Minority Business Development Authority and Set-Aside Act."

Although I am unable to attend the hearing on the above referenced Senate Bill, I am hereby requesting that a copy of the enclosed written testimony be entered for the record.

Thank you for your consideration given this matter.

Sincerely,

Fred H. Rasheed  
Director  
Economic Development

FHR/acm  
Encl.



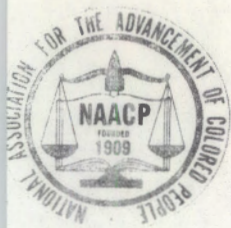
## B I O G R A P H Y

FRED H. RASHEED, A NEW JERSEY RESIDENT ORIGINALLY FROM KANSAS CITY, MISSOURI, IS NATIONAL DIRECTOR OF ECONOMIC DEVELOPMENT FOR THE N.A.A.C.P BASED IN NEW YORK CITY. PREVIOUSLY, HE SERVED AS DIRECTOR OF SPECIAL PROJECTS, BUSINESS DEVELOPMENT DIVISION, BLACK ECONOMIC UNION IN KANSAS CITY, MISSOURI AND AS MANAGEMENT ANALYST WITH THE COMMUNITY DEVELOPMENT CORPORATION IN THE FINANCE AND MONITORING DIVISION. ADDITIONALLY, HE WAS DIRECTOR OF THE MINORITY BUSINESS ENTERPRISE ECONOMIC DEVELOPMENT/TECHNICAL ASSISTANCE PROJECT OF THE N.A.A.C.P IN NEW YORK.

HIS PROFESSIONAL EXPERIENCE IS AUGMENTED BY A BACHELOR'S DEGREE IN ECONOMICS AND BUSINESS ADMINISTRATION, AND A DOCTOR'S DEGREE IN LAW, BOTH FROM RUTGER'S UNIVERSITY. A RECIPIENT OF THE REGINALD H. SMITH COMMUNITY LAWYER FELLOWSHIP, HE SUBSEQUENTLY TAUGHT BUSINESS LAW COURSES AT ROCKHURST COLLEGE.

MR. RASHEED HAS BROAD EXPERIENCE IN ECONOMIC DEVELOPMENT AND MINORITY BUSINESS ENTERPRISE. HE HAS SERVED ON VARIOUS BOARDS AND ADVISORY GROUPS, AND HAS PUBLISHED ARTICLES ON MINORITY BUSINESS AND ECONOMIC DEVELOPMENT.





**NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE**

186 REMSEN STREET • BROOKLYN, NEW YORK 11201 • (212) 858-0800



1909 — 1984

BENJAMIN L. HOOKS  
Executive Director

DISCRIMINATION AND ITS EFFECTS ON MINORITY BUSINESS DEVELOPMENT

Submitted by: Fred H. Rasheed  
In Support of New Jersey  
Senate Bill S-544 Minority  
Business Development Authority  
and Set-Aside Act

Americans like to refer to their country as a free market economy. However, access to the "free market" has been limited to many citizens by social and political forces. In the mid 19th century, most southern states passed laws prohibiting Blacks from entering businesses which required reading and writing skills. Northern states passed laws denying Black entrepreneurs the right to sue. Similar laws were passed by western states to discourage Chinese and Japanese from entering businesses which could compete with whites. Although such laws have been unconstitutional for over 20 years, unwritten social prejudices still impose barriers to opportunities. Whether these barriers are real or imagined is not important, as long as potential entrepreneurs are discouraged by their perceptions of reduced business opportunities because of prejudice.

History suggests that minority entrepreneurship has been shaped by limited access to credit and capital markets, limitations on educational and training opportunities, and dominant attitudes about the roles that minorities should assume in society. Ethnic minorities have faced special obstacles in the commercial world in America. As slaves, Blacks were so far outside the mainstream economy that most were not even permitted to use money. Puerto Ricans and Chicanos



have been held back by language barriers, and American Indians have, for the most part, lived in regions remote from industrial production and commercial markets.

As of 1969, there were 322,000 minority businesses in this country, 163,000 owned by Blacks, 100,000 by Spanish-speaking people, and 59,000 by other minorities. In total, minority businesses represented only 4% of the total number of American businesses. The \$10.6 million in annual revenues of minority businesses constituted only 7/10 of 1% of the total volume of business revenues. Nearly 40% of minority firms as of 1969, were concentrated in food and personal service, offering little potential for growth.

The period 1968-1972 marked the height of strong support for minority firms by government and private institutions. Access to credit for minority firms was stimulated by the Small Business Administration. Also government increased its procurement from minority firms. The Office of Minority Business Enterprise (OMBE) was established under the U.S. Department of Commerce in 1969, with the initial responsibility of coordinating governmental and private efforts to increase support for minority business development.

In the private sector, corporations opened branches or outlets in minority communities, and also offered management assistance, marketing services and financing to minority entrepreneurs. In 1967, the Urban Coalition was established, bringing together business labor, religious and civic organizations, and community groups to lend the skills of majority expertise to inner-city efforts. Insurance companies and banks made commitments to make capital available through various government guaranteed loan programs.



Although during the period 1969-1972 the number of minority owned firms increased by 20%, their sales volumes rose 60%, and there was a trend toward larger and viable businesses, minority business was still barely visible as participants in the economic mainstream of America.

In a survey of minority-owned business enterprises conducted by the U.S. Department of Commerce Census Bureau for the period 1972-1977, the following findings were reported:

- While the number of minority-owned firms increased by 31% and gross receipts by 69% between 1972-1977, minority business' share of all businesses and all gross receipts increased only from 3.7% to 4.8% and 0.58% to 0.62% respectively.
- The non-agricultural business participation rate for the minority population was approximately 13.9 businesses per 1,000 persons. The same rate for the non-minority population was approximately 53.7 non-agricultural businesses per 1,000 persons.
- While 2 out of 3 minority firms are in retail and service, only 1 out of 2 total U.S. firms are in these sectors.
- Only 18.7% of minority firms have paid employees compared to 24.5% of all businesses.
- 60% of all minority firms are located in 6 states (California, Texas, New York, Illinois, Florida and Hawaii) with California containing approximately 25% of the total minority firms.
- 84% of all MBEs are located in the Standard Metropolitan Statistical Areas (SMSAs).
- 93% of all MBEs are sole proprietorships (77% of all firms are sole proprietorships) while only 2% are corporations (15% of all firms are corporations).

Although there are many factors that have contributed to the low participation rate of minorities in America's economy, such as absence of business role models, lack of business knowledge, and limited capital availability to name a few. Business opportunity



restrictions are among the most prevalent. Many resources, including capital, are often constrained by social prejudices. Such constraints are uniquely burdensome to the development of minority businesses.

Though overt prejudicial business dealings are illegal, and the subtle acts or perceptions of acts are difficult to document or record--let alone prove in a court of law, it is possible to create minority business opportunities through mechanisms analogous to EEO programs which have had measurable impact upon minority employment.

In recent years, minority procurement programs have increased in importance as a means to bolster opportunities for minority businesses. A major element of the procurement approach is the SBA 8(a) program in which regular government contracts normally awarded through competitive bidding, are reserved for firms owned by disadvantaged (overwhelmingly minority) businessmen and women.

Sea-a-sides, as typified by the 1977 Public Works Employment Act, which earmarked 10% of local public works expenditures for minority firms, have also proven successful in providing market opportunities to minority owned firms.

In conclusion, the unusually low participation rate of minorities in today's economy, to a great extent the result of the lingering effects of racial discrimination. These lingering effects have become ingrained as imperfections in the free market system of this country.

Decisions regarding government intervention to eliminate these imperfections, must be guided by sound political and economic policy. Federal, state and local government, along with the private sector, must serve as a catalyst if we hope to overcome this problem.



S-544 introduced by Senator Wynona Lipman will go a long way towards ensuring that minority and women businesses receive a fair share of the contract opportunities afforded by State Agencies of New Jersey, and will provide an environment for growth of these businesses.





# MULTI-DEVELOPMENT ENTERPRISES

## INDUSTRIAL PRODUCTS

OFFICE

358 JELLIFF AVENUE  
NEWARK, N. J.

271 WEST 124th STREET  
NEW YORK, N. Y.

DR. MEL DAVIS, President  
WILLIAM C. CAMMACK  
Vice President, MARKETING

### "MINORITY BUSINESS DEVELOPMENT AUTHORITY ACT"

Multi-Development Enterprises, a minority owned manufacturing company highly supports the "Minority Business Development Authority Act" S-544.

The "MBA" S-544 reflects a great sensitivity in urban communities. There is no question about the impact this Act will have on people. S-544 will assist small businesses in their efforts to relieve the pressure of unemployment, bring stature in improving community environment, presents an opportunity to improve the quality of life in urban areas, reduce the welfare dependency through planned and designed training and re-training programs, reduce delinquency and street crime and educational and career planning.

Small business needs the financial and technical assistance of the Minority Small Business Authority Act and request its enactment.

Special thanks to Senator Wynona Lipman and the Senators of The State of New Jersey.



# ASSOCIATED GENERAL CONTRACTORS of New Jersey



Richard L. Forman, Executive Director

TO: The New Jersey State Senate Government, Federal, and  
Interstate Relations and Veterans Affairs Committee

RE: S-544, The Minority Business Development Authority Act

POSITION:

The Associated General Contractors of New Jersey and our parent organization, AGC of America, sincerely believe that citizens are best served by government procurement of construction services using the competitive bidding system. We applaud the efforts by the Small Business Administration and public agencies such as the New Jersey Department of Transportation in providing training sessions, seminars, and hiring consultants to work with small businesses in such critical areas as the acquisition of bonds, financial management, bidding procedures, prequalification, etc. However, once a small business has acquired the needed technical information, it must learn to compete in the competitive bidding system to survive in the market place. Eighty percent of our membership are small businesses who ask for no special concessions or limits on competitive bidding, but rather ask for a chance to compete in the market place helping produce the lowest possible price for the State's critically needed construction repairs and improvements.

Set asides and special new authorities to restrict competition or eliminate it on certain contracts are not in the best interests of the State, nor are they in the long term in the best interests of the firms they portend to help, since artificial construction



47x

Mail: P.O. Box 805, 40 Brunswick Avenue, Edison, New Jersey 08818, (201) 287-4500



## AGC of NJ Position S-544 (Cont.)

markets created for minority firms hold little hope that once those firms enter the world of competitive bidding they will have learned to compete.

The fostering of small business is a worthy goal. Contracting agencies can offer many kinds of help including structuring the size of contracts when economically feasible to be in the range of bonding for smaller contractors, but to set aside construction contracts is expensive, unfair to other businesses, and counterproductive in fostering the needed competitive skills for today's marketplace.

RICHARD L. FORMAN  
EXECUTIVE DIRECTOR  
ASSOCIATED GENERAL CONTRACTORS  
OF NEW JERSEY

ATTACHMENT: "The Cost and Impact of Small Business Set-Aside Programs in the Construction Industry"



# **THE COST AND IMPACT OF SMALL BUSINESS SET-ASIDE PROGRAMS IN THE CONSTRUCTION INDUSTRY**



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The construction industry can quite properly be referred to as one of the true bastions of the free enterprise system and consequently the haven of small business.

Two characteristics of the construction industry need particular emphasis.

First, the subcontracting system offers small business firms a training ground in which to develop the skills necessary to become a successful contractor.

Open competitive bidding is the second major characteristic which adds to the ease of entry into the industry. Virtually all public works construction, whether it be on the federal, state or local level, is procured through open competitive bidding. All competitors submit a sealed bid by a stated deadline. All bidders bid on the same specifications and all are expected to meet the same standards of quality. Open competitive bidding ensures that the construction purchaser will receive the highest quality product for the lowest possible price. It also ensures that the only factor which will be considered in selecting between qualified contractors is the price offered.

The award of Federal construction contracts through open unrestricted competition to the lowest responsible bidder has always been and continues to be the most effective way to obtain economical bids and afford maximum safeguards in the expenditures of public funds. However, it now appears that open unrestricted competition on Federal construction is rapidly becoming a thing of the past because the Small Business set-aside program and the Small Business 8(a) program have acted to undermine the open competitive bid system by limiting those who are permitted to compete.

### **Small Business Set-Aside Program in Construction — Unworkable**

Section 15 of the Small Business Act has resulted in the use of the small business set aside program in which federal agencies remove contracts from the open competitive market and restrict bidding and award of these contracts to only those firms defined to be small businesses by the Small Business Administration.

Section 15 has been interpreted by federal contract awarding agencies to mean that fully 100 percent of federal construction contracts should be removed from open competition and awarded on a restricted set-aside basis to small businesses. The Defense Acquisition Regulations (DAR), for example, require that all construction contracts up to \$2 million in value be automatically set aside for restricted bidding and award. It also requires that all other construction contracts should be set aside if the Contracting Officer expects that two responsible small businesses will bid on a contract and also expects that the award will be made at a "reasonable price." Given the broad language of the regulation and despite the fierce competition in the construction market, a contracting officer can literally decide that all construction



businesses.

Overzealous and non-selective implementation of the small business set-aside program by the Small Business Administration and Federal Contracting Awarding Agencies has resulted in extremely large quantities of construction contracts being routinely set aside for restricted bidding and award. Statistics issued by the Federal Procurement Data System reveal that a shocking 60 percent of all federal construction contract actions in FY '81 and FY '82 were unavailable for open, unrestricted competition due to SBA's Set Aside and 8(a) Programs.

Within the Department of Defense 63 percent of all construction contracts were unavailable and within the Naval Facilities Engineering Command, a staggering 77 percent of its construction contracts in FY '81 and 75 percent in FY '82 were unavailable for open competition because of these programs.

The overzealous and non-selective use of the set-aside program has also resulted in extremely large construction contracts, many requiring specialized skills and equipment, being set-aside for restricted bidding and award and thus unavailable for open free competition. Examples of \$10 million projects being set aside are commonplace and some projects in the \$15-\$20 million range are set aside.

The set-aside program has a dramatic impact on "medium sized" contractors whose volume puts them over the eligibility standard for "small business" classification. The set aside program, because of its exclusionary practices, restricts "medium sized" firms from bidding on many contracts that are of a size to meet their business strategy objectives.

The program also adversely impacts firms that are eligible for set aside contracts by forcing them to alter their business strategy to comply with the program. As a contracting firm approaches the size standard limit, it is faced with the dilemma of making the choice of 1) limiting the company's growth in order to continue to qualify to bid on the overwhelming majority of federal construction contracts in its geographic area or 2) exceeding the size standard and thus eliminating itself from the opportunity to secure federal construction contracts.

Another dramatic adverse effect of the set-aside program is its cost to the government and the taxpaying public. There is no question but that when competition is restricted it results in increasing costs, and the set-aside program is no exception. A 1976 Report of Consultants to the Army Corps of Engineers on small business set-asides (dredging) found the following: "... the low bids received under unrestricted advertisements were 9 percent lower than those received under set asides ..." When projected to the total value of construction contracts set aside government-wide in FY 1982, \$3.0 billion, the "penalty cost" for restricted bidding and award under the construction set-aside program was over \$270 million.

The cost and impact of small business set-asides in the construction industry is particularly wasteful since small business set asides are simply not needed in construction



In 1963 the Administrator of the Small Business Administration directed that a study be instituted to look at the construction industry to detail its characteristics. The findings of that study are as valid today as they were in 1963:

- There can be no question but that the application of any measures of competitiveness to the building and construction industry would result in the conclusion that it should be ranked among the least concentrated or most competitive. It is not dominated by a few large firms.
- The above features of the construction industry suggest that the construction industry is already relatively highly competitive among sectors, and that the need for using the influence of federal contracts to increase competitiveness deserves a low priority in construction.

The above facts lead inescapably to the conclusion that the characteristics of the construction industry already assure ample opportunity for qualified contracting firms of all sizes to obtain a share of federal construction outlays.

### SBA 8(a) Program—A Dismal Failure

Another Small Business Administration program which is contributing to the demise of the open competitive bid system and inflating costs is the SBA 8(a) program. Under the 8(a) program, the SBA and a federal contract awarding agency agree to remove a contract from the open unrestricted competitive bid system and sole-source negotiate the contract with a "socially and economically disadvantaged small business firm" as defined by the Small Business Administration.

Between 1968 and 1983, the SBA has utilized the 8(a) contracting program to channel some \$10.2 billion in federal procurement contracts to 4,977 participating "socially and economically disadvantaged" firms.

The SBA 8(a) program, designed around a "protected market" for selected disadvantaged firms, has proven to be a dismal failure. According to data contained in a 1981 GAO Report (CED-81-55), only a miniscule 4 percent or 166 of the 4,598 MBE firms participating in the 8(a) program between 1968 and 1980 graduated. An earlier GAO Report on firms that did graduate found that only 33 showed a positive net worth.

The failure of this program in the construction industry is assured and justified for three primary reasons: first, the 8(a) program does not achieve its stated purpose in construction because it is not compatible with the very nature of the industry; second, the extremely high cost it engenders to the government and the taxpaying public; and third, because it impacts harshly on non-8(a) construction firms.

Survival in the construction industry requires that one must learn to be competitive: one must learn to submit the lowest responsible bid. Yet, the 8(a) program, the stated purpose of which is to "promote the competitive viability of socially and economically disadvantaged firms," never requires the firms to be competitive, never requires the firms to bid. One has to wonder how a firm can learn to be competitive, without ever having to compete. Giving a contract to a firm in the 8(a)



program and negotiating the price for the work, does not help that firm become a competitive business. In fact, it removes the 8(a) contractor from that portion of the process in which competitive skills are developed.

Once a competitive contract is won, a contractor must use his technical skills. These skills cannot develop through the 8(a) program because SBA allows an 8(a) construction firm to subcontract up to 85 percent of the work. Retaining only 15 percent of the construction contract would generally result in the 8(a) firm serving only as a conduit to pass along payments to the subcontractor or subcontractors.

Whenever competition is limited, or eliminated as in the case of the 8(a) program, higher costs usually result. This is generally difficult to document, however, because once a federal construction project has been removed from the open unrestricted competitive market for delivery to the 8(a) program, there is no opportunity for open competitive bids for comparison purposes. Several examples are available, however, wherein 8(a) contracts were initially negotiated but subsequently released to open competition, thus allowing valid cost comparisons.

		Savings Through Open Competitive Bidding
Highway relocation, Elephant Butte, Idaho (Federal Highway Admin.)	The 8(a) negotiated price was \$3,024,000; the low competitive bid was \$2,355,000	\$669,000 or 22%
Environmental test facility, Yuma, Arizona (Army Corps of Engineers)	The 8(a) price was \$1,839,872; the low bid was \$1,558,884.	\$280,988 or 15%
Flood wall project, Delta, Louisiana. (Army Corps of Engineers)	The 8(a) price was \$416,000; the low bid was \$188,950.	\$227,050 or 55%
Water Supply project, Riverton, Wyoming (Bureau of Reclamation)	The 8(a) price was \$580,000; the low bid was \$353,812.	\$226,133 or 39%

These examples are indicative of the cost of the 8(a) program in construction. The waste of money to the taxpaying public is staggering.

### Ways to Eliminate Waste of Tax Dollars

Open, unrestricted competition in federal construction procurement has served the nation's taxpayers well. Taxpayers have the right to be assured that their tax monies are being spent in the most



efficient and economic manner possible. Open unrestricted competition in federal construction procurement has always given that assurance.

The SBA set-aside and SBA 8(a) programs are changing all that. Through over-zealous advocacy and misguided implementation, these programs have for too long eliminated open unrestricted competition in federal construction procurement.

In order to restore open unrestricted competition to federal construction procurement and reduce federal construction costs to the government and the taxpaying public, the small business set-aside program and the small business 8(a) program must:

- Be legislatively eliminated from application in the construction industry.

At a minimum, the problems engendered by these special preference programs can be reduced by the following actions:

#### **SMALL BUSINESS SET-ASIDE PROGRAM**

- Revision of Federal Contract Awarding Agency regulation requirements for small business set-asides.
- An overall reduction in all agency's "goals" for utilization of the small business set-aside program.
- Placing a maximum limit of no more than \$2 million on the size of a construction contract which can be set-aside.

#### **SMALL BUSINESS 8(a) PROGRAM**

- Limiting the number of 8(a) contracts in construction.
- Placing a maximum limit of no more than \$2 million on the size of a construction contract which can be used in the 8(a) program.



## BACKGROUND

Small Businesses are the backbone of the American economic system. Historically, small business has provided much of the growth in jobs and innovation, as well as being the primary supplier of services and deliveries of goods to virtually every community, large and small, in the country.

Nowhere is this more true than in the construction industry. The industry is typified by family-owned businesses that work close to home, jealously guarding their integrity and reputation in the community, in an extremely competitive and open industry. Construction is not dominated by a few firms, rather it is dominated by the open competitive bid system. That is, competition in terms of price and ability to complete the task determines which companies win contracts. Depending on the nature of the construction project, the general contractor may complete the work entirely with his own forces, or may subcontract the speciality work as may be required for a complete job.

The industry is also one of but a few that permit an individual to make a start with little or no capital. An emerging construction firm generally uses credit to buy materials and arranges for short term loans to pay for equipment rental and labor costs. This ease of entry into the industry, while safeguarding and assuring competition in the industry, is also one of the chief reasons for the high rate of failure in the industry.

The entire system adds up to an industry that is remarkably open to entrepreneurs willing to parlay expertise, capital and hard work into a successful business.

Two characteristics of the construction industry need particular emphasis.

First, the subcontracting system offers entrepreneurs a training ground in which to develop the skills necessary to become a successful contractor. It also allows the general contractor to delve into new markets within the industry by subcontracting for those specialized aspects of a job for which the contractor may not have the needed in-house expertise.

Open competitive bidding is the second major characteristic which adds to the ease of entry into the industry. Virtually all public works construction, whether it be on the federal, state or local level, is procured through open competitive bidding. This is also true in the private sector where most construction contracts are awarded to the lowest bidder. In construction all competitors submit a sealed bid by a stated deadline. All bidders bid on the same specifications and all are expected to meet the same standards of quality. In this way, open competitive bidding ensures that the construction purchaser will receive the highest quality product for the lowest possible price. It also ensures that the only factor which will be considered in selecting between qualified contractors is the price offered. This is true not only for the general contractor but also for the subcontractors who are selected in the same manner.



The construction industry, consequently, can quite properly be referred to as one of the true bastions of the free enterprise system and therefore the haven of small business. The industry, however, has been under a concerted, non-stop attack for years which severely threatens the open competitive bid system. The Federal Government has long preferred the use of formal advertising and open competition in the award of public contracts. As far back in our history as 1809, Congress required that "all purchases and contracts for suppliers or services . . . shall be made either by open purchases or by previously advertising for proposals." (2 Stat 536). The award of Federal construction contracts through open unrestricted competition to the lowest responsible bidder has always been, and continues to be, the most effective way to obtain economical bids and afford maximum safeguards in the expenditures of public funds. However, it now appears that open unrestricted competition on Federal construction is rapidly becoming a thing of the past.

The attacks, oddly enough, have come from the primary beneficiaries of the industry's competitiveness—the Small Business Administration and Federal Contract Awarding Agencies—and have come in the form of competition restricting set-asides. Since 1958 when the Small Business Act became law, the federal government has been directed "to aid, counsel, assist and protect . . . the interests of small business concerns in order to preserve free business enterprise." The primary emphasis in the Act is that "The essence of the American economic system is free competition . . . the preservation and expansion of such competition is basic not only to the economic well-being but to the security of this Nation."

The Small Business Administration and federal procuring agencies are charged with implementing programs to achieve this goal. Two of these programs—the Small Business set-aside program and the Small Business 8(a) program—have, however, acted to undermine the open, competitive bid system and "free business enterprise" rather than aid it by limiting those who are permitted to compete. This study looks at the way these programs are imposed and analyzes their adverse impacts and costs on the construction industry and the tax-paying public.

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## SMALL BUSINESS SET ASIDES

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Section 15 of the Small Business Act empowers the Small Business Administration and federal contract awarding agencies to take procurement actions determined "to be in the interest of assuring that a fair proportion of the total purchases and contracts for property and services for the government are placed with small business concerns." This language has resulted in the development and use of the small business set-aside program in which federal agencies remove contracts from the open competitive market and restrict bidding and award of these contracts to only those firms defined to be small businesses by the Small Business Administration.



One would assume that Section 15's use would be limited to actions necessary to assure that a fair proportion of contracts are awarded to small businesses. Such, however, is not the case. Instead, Section 15 has been interpreted by federal contract awarding agencies to mean that fully 100 percent of federal construction contracts should be removed from open competition and awarded on a restricted set-aside basis to small businesses.

The Defense Acquisition Regulations (DAR), for example, require that all construction contracts up to \$2 million in value be automatically set-aside for restricted bidding and award. It also requires that all other construction contracts should be set-aside if the Contracting Officer expects that two responsible small businesses will bid on a contract and also expects that the award will be made at a "reasonable price." This broad language and subjective terminology leaves contracting officers with very little discretion in making the choice to restrict competition. There are no guidelines as to what represents a "reasonable price." There is also no requirement that the contracting officer look at the requirements of the project to see if it is even within the capabilities of a small business. He only need guess that any two small business firms may be willing to bid on the project.

In today's market, it is not unusual for 25 or more contractors to bid on available contracts, and not unusual for even the highest of the 25 bids to be below the government's estimate. Given the broad language of the regulation and despite the fierce competition in the construction market, a contracting officer can literally decide that all construction contracts must be set-aside for restricted bidding and award to small businesses.

Clearly, this exceeds the actions necessary to implement Section 15. Clearly, as well, this portends the demise of open competition for federal construction contracts.

### Small Business Size Standards

The Small Business Administration is responsible for determining which firms are eligible to participate for these restricted set-aside contracts by establishing size standards defining what is and what is not a small business. This determination is at best an arbitrary decision.

To get a clear picture of just how arbitrary the size standard process can be, one need only look at the various size proposals SBA has made over the past three years.

- Since 1975, to qualify as a small business general construction firm, a company's three year average annual volume must not have exceeded \$12 million.
- In 1980, obviously because its arbitrary size standard was unfair and unworkable, SBA proposed a size standard based on the number of employees. The "corrective" proposal reflected a gross lack of understanding of the construction industry. The proposal would have permitted and encouraged "broker" operations by allowing large volume firms which subcontract an abnormal amount of work and do virtually no work with their own forces to qualify for the set-aside program, while genuine contractors



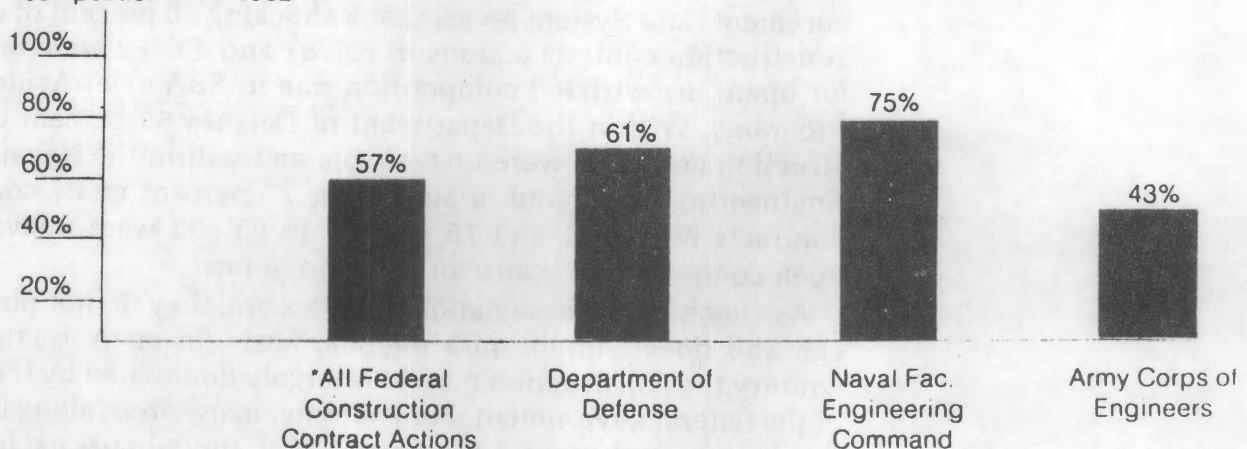
that were also genuinely small business firms would have been excluded by SBA's misguided efforts to help them.

- In 1982, SBA tried again and proposed raising the existing volume standard on an "emergency basis" from \$12 million to \$15 million. That proposal did not get by the scrutiny of the Office of Management and Budget.
- Two months later, presumably knowing that its arbitrary size standards were not working, SBA tried another approach which again reflected abominable ignorance of the industry it was regulating. SBA proposed a multitude of different size standards based on different construction categories. One of the many results of this inept proposal was that the same construction firm would have been eligible for SBA largesse while engaged in one type of construction, but ineligible in another type of construction despite the fact of being essentially a small business by any reasonable yardstick.
- Undeterred by the continued failure of its size standard proposals, the most recent SBA proposal seeks to raise the volume standard to \$21.5 million. That proposal is again deficient because it fails to recognize that the only small business development program that is necessary in the construction industry is open, free, and unfettered competition.

Perhaps this indecision is better understood by reference to a 1978 GAO study entitled "What is A Small Business? The Small Business Administration Needs to Reexamine Its Answer." (CED-78-149). The GAO study quotes a former SBA Acting Assistant Administrator as

### The Effect of Small Business Set-Aside and 8(a) Programs on Competition in Construction

Percent of contract actions unavailable for open, unrestricted competition in FY 1982



\*(contracts, change orders, amendments, additions)



- 60% OF ALL FEDERAL CONSTRUCTION CONTRACT ACTIONS (CONTRACTS, CHANGE ORDERS, AMENDMENTS, ADDITIONS) WERE UNAVAILABLE FOR OPEN, UNRESTRICTED COMPETITION IN FY 1981 DUE TO SBA'S SET-ASIDE AND 8(a) PROGRAMS.
- 57% OF ALL FEDERAL CONSTRUCTION CONTRACT ACTIONS WERE UNAVAILABLE FOR OPEN, UNRESTRICTED COMPETITION IN FY 1982.
- 62% OF FEDERAL CONSTRUCTION CONTRACT ACTIONS WITHIN THE DEPARTMENT OF DEFENSE WERE UNAVAILABLE FOR OPEN, UNRESTRICTED COMPETITION IN FY 1981, AND 61% WERE UNAVAILABLE IN FY 1982.
- 77% OF FEDERAL CONSTRUCTION CONTRACT ACTIONS WITHIN THE NAVAL FACILITIES ENGINEERING COMMAND WERE UNAVAILABLE FOR OPEN, UNRESTRICTED COMPETITION IN FY 1981.
- 75% OF FEDERAL CONSTRUCTION CONTRACT ACTIONS WITHIN THE NAVAL FACILITIES ENGINEERING COMMAND WERE UNAVAILABLE FOR OPEN, UNRESTRICTED COMPETITION IN FY 1982.
- 43% OF FEDERAL CONSTRUCTION CONTRACT ACTIONS WITHIN THE ARMY CORPS OF ENGINEERS WERE UNAVAILABLE FOR OPEN, UNRESTRICTED COMPETITION IN BOTH FY 1981 AND FY 1982.

saying, "What is wrong with the present size standards? First of all, the economic basis upon which they were developed is hazy at best. Because the procedures used to establish them are unclear, their validity and accuracy in many cases is subject to question . . . the original standards that serve as the basis for the current ones are in many cases questionable in terms of their appropriateness and justification."

It is clear that SBA has no idea of what constitutes a small business in the construction industry, and yet the arbitrary decision which they reach in setting a size standard has a devastating impact on those firms which are excluded from competing for federal construction contracts.

### Impact on Competition

Overzealous and non-selective implementation of the small business set-aside program by the Small Business Administration and Federal Contracting Awarding Agencies has resulted in extremely large quantities of construction contracts being routinely set aside for restricted bidding and award. Statistics issued by the Federal Procurement Data System reveal that a shocking 60 percent of all federal construction contract actions in FY '81 and FY '82 were unavailable for open, unrestricted competition due to SBA's Set-Aside and 8(a) Programs. Within the Department of Defense 63 percent of all construction contracts were unavailable and within the Naval Facilities Engineering Command, a staggering 77 percent of its construction contracts in FY '81 and 75 percent in FY '82 were unavailable for open competition because of these programs.

As shocking as these national figures are, they do not portray what can and does happen on a regional basis. In many sections of the country the construction market is largely dominated by the presence of the federal government. For example, many areas along the Mississippi River and around the Great Lakes rely almost exclusively on federal government activity to generate construction markets. This is also true in areas where there are military installations and government owned research facilities. In these areas the federal government



is literally the only construction market and its actions have a significant impact on local contractors.

In some of these regions the use of the set aside program has resulted in 90 percent or more of federal construction contracts being unavailable for open unrestricted competition.

The overzealous and non-selective use of the set-aside program has also resulted in extremely large construction contracts, many requiring specialized skills and equipment, being set-aside for restricted bidding and award and thus unavailable for open free competition. Examples of \$10 million projects being set aside is commonplace and some projects in the \$15-\$20 million range are set aside.

For example, in November 1983 the General Services Administration set aside for restricted bidding and award to small businesses the Denver Mint renovation and expansion project which had an estimated value range of \$10 to \$20 million. Additionally, the specifications for this project required strong experience on projects of a similar nature and a strong financial position.

The set-aside program also has a dramatic impact on "medium sized" contractors whose volume puts them over the eligibility standard for "small business" classification. In selecting projects to bid, contractors must select those that are within their capabilities at the time, consistent with obligations on other on-going work. This means that the size and type of project to be bid will change according to many different variables. The set-aside program, however, because of its exclusionary practices, restricts "medium sized" firms from bidding on many contracts that are of a size to meet their business strategy objectives.

The program also adversely impacts firms that are eligible for set-aside contracts by forcing them to alter their business strategy to comply with the program. As a contracting firm approaches the size standard limit, it is faced with the dilemma of making the choice of: 1) limiting the company's growth in order to continue to qualify to bid on the overwhelming majority of federal construction contracts in its geographic area or 2) exceeding the size standard and thus eliminating itself from the opportunity to secure federal construction contracts.

Clearly, under these circumstances, the set-aside program is self-defeating in that it prevents the growth of small business firms and free enterprise opportunities.

### Cost of the Set-Aside Program

The most dramatic adverse effect of the set-aside program is its cost to the government and the taxpaying public. There is no question but that when competition is restricted it results in increased costs, and the set-aside program is no exception. A 1976 Report of Consultants to the Army Corps of Engineers on small business set-asides (dredging) found the following "... the low bids received under unrestricted advertisements were 9 percent lower than those received under set-asides. ..."

When projected to the total value of construction contracts set-aside government-wide in FY 1982, \$3.0 billion, the "penalty cost" for



## ARBITRARY SIZE STANDARDS

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- Since 1975, to qualify as a small business general construction firm, a company's three year average annual volume must not have exceeded \$12 million.
- In 1980, SBA proposed a size standard based on the number of employees.
- In 1982, SBA proposed raising the existing volume standard on an "emergency basis" from \$12 million to \$15 million.
- Soon after, SBA proposed a multitude of different size standards based on different construction categories.
- A current proposal now seeks to raise the volume standard to \$21.5 million.

restricted bidding and award under the construction set-aside program was over \$270 million.

The incurring of such "penalty costs" raises serious questions as to the violation of the SBA's and Federal Contracting Awarding Agencies' fiduciary responsibility to assure that public monies are spent in the most efficient and economical manner possible.

Not only is there a direct cost impact from restricted competition, the administrative costs are equally significant. A recent Congressional Budget Office estimate on legislation establishing a new Research and Development set-aside program places the administrative costs for 4 years at \$193 million. Considering that this new program is only a fraction of the size of the construction set-aside program, there is little doubt that the set aside program in construction will cost the government and the taxpaying public many times more than \$193 million.

## Are Small Business Set-Asides Needed in Construction?

Simply put, the answer is no.

In 1963 the Administrator of the Small Business Administration directed that a study be instituted to look at the construction industry to detail its characteristics. The study looked at the economic factors that influence the industry to determine if the then emerging SBA programs were applicable to construction. The findings of that study are as follows, and are as valid today as they were in 1963:

- "There can be no question but that the application of any measures of competitiveness to the building and construction industry would result in the conclusion that it should be ranked among the least concentrated or most competitive. It is not dominated by a few large firms.
- The industry is comprised of a very large number of enterprises.
- The industry is comprised of small enterprises by conventional standards.
- There is a very high rate of business births in construction. None of the major industry categories had an entrance rate as high as construction.



- There is also a high rate of business failures in the industry.
- The financial costs of entry to the industry are relatively low in many branches. Equipment may be rented. Workmen typically furnish their own tools. In many cases owners and clients may advance part of capital.
- The scale of operations in the construction industry reaches efficient levels at relatively small size. The technology of the industry does not require large scale operations and large capital costs, compared to industry generally, in order to achieve efficient operations.
- Construction enterprises have few fixed costs and move readily from locality to locality and even region to region, increasing materially the degree of competition in a single locality. Work opportunities attract bidders from far and wide.
- The bidding or pricing system of the industry in effect on most federal government work is highly competitive. Operations do not continue for a long time on prices initially established by a seller, as in many manufacturing industries. The contractor must in the ordinary case face new competition on each new contract he gets.
- The bidding takes place on a specifically defined project. All bidders are furnished the same specifications and plans, and in the typical case, the competitors are bidding on a precisely defined and identical product.
- The subcontracting system, characteristic of construction projects, enhances the competitive nature of the industry. Each successful bidder may consider whether to perform the work or subcontract a portion of it in turn.
- Contractors face keen competition from prospective clients who prefer to perform work themselves. Industrial enterprises, householders, and local, state and federal government agencies affect competition conditions in construction by performing an appreciable amount of construction work themselves.
- The above features of the construction industry suggest that the construction industry is already relatively highly competitive among sectors, and that the need for using the influence of federal contracts to increase competitiveness deserves a low priority in construction. The use of set-asides in construction needs to be placed in this perspective."

The above facts lead inescapably to the conclusion that the characteristics of the construction industry assure ample opportunity for qualified contracting firms of all sizes to obtain a share of federal construction outlays.

Large firms, for example, place themselves at a competitive disadvantage if they compete for a project that is too small for them since they have to assign key management or supervisory personnel to such projects or have to acquire such personnel. At the same time, such larger firms have to commit some of their bonding capacity for these smaller projects with the result that when they contemplate bidding on projects in their own construction marketplace level they are at a disadvantage with their real competitors because they may have dissipated their management and supervisory skills, their bonding capacity and their financial resources on projects that are outside the scope of their natural market area.



Further evidence that set-asides are not needed in construction is provided by the Federal Procurement Data Center's statistics on federal construction contract actions. These statistics indicate that in both FY '81 and FY '82, 75 percent of federal construction contract actions were awarded to small business. Over one third of these awards were made through the open unrestricted competitive bid system and not by way of the set-aside program, clearly indicating that small businesses are capable of winning construction contracts in the open unrestricted market without the government's assistance. What makes this figure particularly significant is that, presumably, these contract actions were not set-aside for restricted bidding and award for small business because a contracting officer deemed that they were not within the capabilities of a small business. If small businesses can compete so successfully for contracts "not within their capabilities," there is little doubt that they will be equally successful in open unrestricted competition for all contracts.

The subcontracting system in the construction industry also negates any need for small business set-asides in construction.

Depending on the type of construction, as much as 50 percent of prime contracts may be subcontracted to various specialty contractors who are typically small businesses. In reporting the results of contract actions awarded, the Federal Procurement Data Center's statistics do not report the percentage subcontracted to small businesses. If such figures were available, it is anticipated they would reveal that the overwhelming majority of federal construction contracts are accomplished by small businesses.

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## SMALL BUSINESS 8(a) PROGRAM

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Another Small Business Administration program which is contributing to the demise of the open competitive bid system is the SBA 8(a) program. This program was created by section 8(a) of the Small Business Act of 1958, although it did not become operable until 1968. Under the 8(a) program, the SBA and a federal contract awarding agency agree to remove a contract from the open unrestricted competitive bid system and sole-source negotiate the contract with a "socially and economically disadvantaged small business firm" as defined by the Small Business Administration.

Between 1968 and 1983, the SBA has utilized the 8(a) contracting program to channel some \$10.2 billion in federal procurement contracts to 4,977 participating "socially and economically disadvantaged" firms. The theory underlying the program is that a disadvantaged firm, once awarded one or more sole-source negotiated contracts by various federal agencies in cooperation with the SBA, and having taken advantage of SBA management and technical assistance, would eventually be able to stand alone, compete successfully, and survive in the free enterprise system.

Just the opposite has occurred. The SBA 8(a) program, designed around a "protected market" for selected disadvantaged firms, has proven to be a dismal failure. According to data contained in a 1981

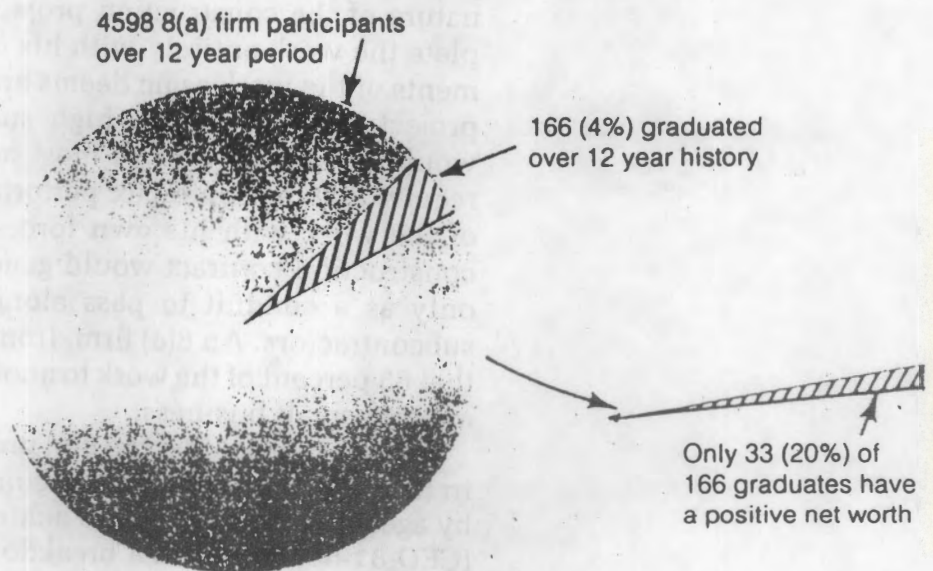


GAO Report (CED-81-55), only 4 percent or 166 of the 4,598 MBE firms participating in the 8(a) program between 1968 and 1980 graduated. An earlier GAO Report on firms that did graduate found that only 33 showed a positive net worth. There has been little, if any, improvement in the 8(a) success rate since this data was compiled.

Nationally syndicated columnist Donald Lambro may have summed it up best when he said "The idea was to temporarily give small approved 8(a) businesses non-competitive federal contracts and other aid to help them eventually become self-sufficient. In fact, the program has become an unending contract pipeline upon which most 8(a) firms are almost totally dependent for survival."

The failure of this program in the construction industry is justified for three primary reasons: first, the 8(a) program does not achieve its stated purpose in construction because it is not compatible with the very nature of the industry; second, the extremely high cost it engenders to the government and the taxpaying public; and third, because it impacts harshly on non-8(a) construction firms.

### History of 8(a) Program



### Incompatibility with Construction

Construction is not dominated by a few firms, rather it is dominated by the open competitive bidding system with award to the lowest responsible bidder. Owners, both private and public, benefit from this competitive bid system by receiving top quality work for the lowest possible price. Contractors benefit by the assurance that an equitable opportunity to participate and bid on any work is open to all. Competition assures that the industry will remain open. To survive in the construction industry one must learn to be competitive; one must learn to submit the lowest responsible bid. Yet, the 8(a) program, the stated purpose of which is to "promote the competitive viability of socially and economically disadvantaged firms," never requires the firms to be competitive, never requires the firms to bid. The 8(a) program in construction is a sole source negotiation program—not even competitive negotiation—but sole source.

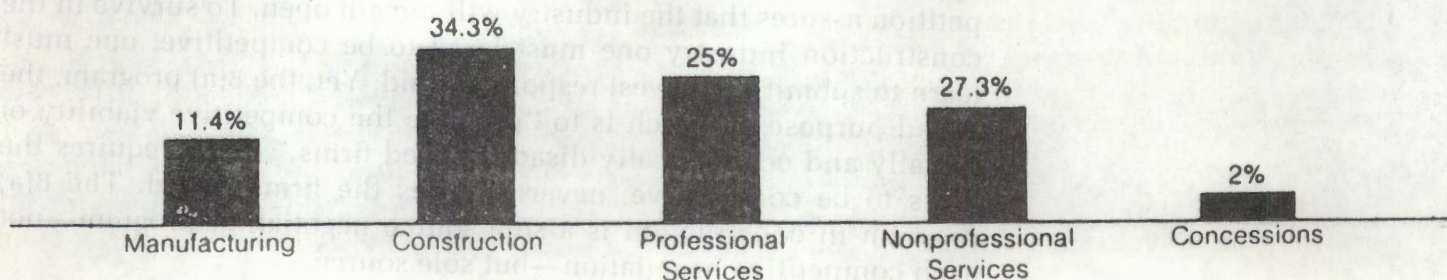


One has to wonder how a firm can learn to be competitive, without ever having to compete. Giving a contract to a firm in the 8(a) program and negotiating the price for the work, does not help that firm become a competitive business. In fact, it removes the 8(a) contractor from that portion of the process in which competitive skills are developed. Surveying the market of available work, deciding which projects are within the firm's capabilities, estimating the project, obtaining bonding, soliciting competitive subcontract bids and supply quotes, and finally preparing a competitive bid are the skills which are needed to become competitive in construction. The 8(a) program undermines the development of these skills.

Once a competitive contract is won, a contractor must use his technical skills to schedule the progress of the work, coordinate delivery of materials, manage the performance of the construction by his employees, and ensure that subcontractors are performing their tasks and keeping the entire progress of the project on schedule. These skills also are not developed by the 8(a) program because SBA allows an 8(a) construction firm to subcontract up to 85 percent of the work. Subcontracting is, of course, a part of construction. Depending on the nature of the construction project, the general contractor may complete the work entirely with his own forces, or may subcontract segments of the work as he deems appropriate. However, 85 percent of a project is an extremely high subcontract percentage, and, in fact, would not be allowed on most federal construction contracts which require that the contractor perform between 50 percent and 80 percent of the work with his own forces. Retaining only 15 percent of the construction contract would generally result in the 8(a) firm serving only as a conduit to pass along payment to the subcontractor or subcontractors. An 8(a) firm, ironically, is not required to subcontract that 85 percent of the work to another disadvantaged business, or even another small business.

Despite the fact that the 8(a) program is not relevant to participation in the construction industry, construction has been relied on heavily by agencies and the SBA to achieve 8(a) usage. The 1981 GAO report (CED-81-55) included a breakdown of the firms which are included in the 8(a) portfolio.

**Comparison of 8(a) Program Participants by Business Class  
As of September 30, 1980**





The business category with the largest number of participating firms was construction, at 34 percent, but the impact is even greater than this number implies. Construction is the only category that only includes one industry. The other categories, for example "professional services" or "nonprofessional services" are broad groupings which can cover a variety of industries. No other single industry is impacted as significantly as construction.

In attempts to achieve disadvantaged business utilization goals, larger and larger construction contracts have been given to the 8(a) program. In 1983 the Army Corp of Engineers sole-source negotiated a \$14 million construction contract under the 8(a) program. One must wonder how firms large enough and sophisticated enough to handle a \$14 million construction contract can be considered small disadvantaged businesses. The 85 percent subcontracting allowance undoubtedly provides the answer by allowing the 8(a) firm to merely serve as a payment conduit for other firms who actually perform the work. It seems apparent that projects of this size are being awarded 8(a) merely because their volume quickly adds up and helps an agency achieve its disadvantaged business utilization goal.

### Costs of the 8(a) Program

Whenever competition is limited, or eliminated as in the case of the 8(a) program, higher costs usually result. This is generally difficult to document, however, because once a federal construction project has been removed from the open unrestricted competitive market for delivery to the 8(a) program, there is no opportunity for open competitive bids for comparison purposes. Several examples are available, however, wherein 8(a) contracts were initially negotiated but subsequently released to open competition, thus allowing valid cost comparisons:

#### Example I

A highway relocation project in Idaho was removed from the competitive market by the Federal Highway Administration (FHWA) and given to the SBA for the 8(a) program. SBA provided an 8(a) contractor for the project who submitted a proposal of \$3.9 million for the work. This price was \$911,000 over the government's estimate and FHWA was reluctant to pay the price. The negotiations continued and FHWA eventually agreed to remove a portion of the work from the contract. In addition, SBA agreed to give the 8(a) contractor \$350,000 in "business development expense funds" for the purchase of equipment. With these changes the 8(a) firm was able to offer a price of \$3.025 million. It should be noted that this 8(a) contractor's past construction experience had been in the \$200,000 or less range with limited highway construction experience and that a non-8(a) construction firm was to be a major subcontractor and would in fact be in charge of the project.

FHWA decided not to award the contract to the 8(a) firm but to competitively bid the entire work, including the previously removed portion. Three months later 19 firms bid for the work. When the bids were opened the low bid price was \$2.355 million. The government



and the taxpayers saved over \$1 million when compared to the overall original negotiated price, and \$669,000 when compared to the last negotiated price. When added to the additional \$350,000 in business development expense funds that would not be paid out, the competitive price represents a 40 percent savings, or \$1.019 million.

### Example II

A flood wall project was given by the Corps of Engineers to the SBA for the sole-source negotiated 8(a) program. A price of \$416,000 was negotiated for the work with an 8(a) firm. The project, however, was eventually put out for open competitive bid. Fourteen months after the contract could have been offered for competition, bids were finally opened. The low bidder was awarded the contract at a price of \$188,950. This represents a 55 percent savings to the taxpayer. As in the previous example, there were 19 bidders on this project from six different states.

If these examples, and those which follow, are indicative of the cost of the 8(a) program in construction, the waste of money to the taxpaying public is staggering.

		Savings Through Open Competitive Bidding
Highway relocation, Elephant Butte, Idaho (Federal Highway Admin.)	The 8(a) negotiated price was \$3,024,000; the low competitive bid was \$2,355,000.	\$669,000 or 22%
Environmental test facility, Yuma, Arizona, (Army Corps of Engineers)	The 8(a) price was \$1,839,872; the low bid was \$1,558,884.	\$280,988 or 15%
Flood wall project, Delta, Louisiana, (Army Corps of Engineers)	The 8(a) price was \$416,000; the low bid was \$188,950.	\$227,050 or 55%
Water supply project, Riverton, Wyoming (Bureau of Reclamation)	The 8(a) price was \$580,000; the low bid was \$353,812.	\$226,188 or 39%

### Impact on Non-8(a) Construction Firms

Nineteen bidders on construction projects is becoming commonplace throughout the industry and is indicative of the state of the construction market. These conditions naturally impact all construction contractors. When added to the increased use of the 8(a) program which takes further work out of the open market, the non-8(a) small business construction contractor is facing a bleak future. The impact is compounded by the way in which contract awarding agencies administer their participation in the 8(a) program.

The Army policy, for example, for implementing the 8(a) program requires the Corps of Engineers to "reserve" for the SBA, which means to take out of the open competitive market, any projects which they deem are "susceptible" to performance by a small disadvantaged firm. This has resulted in the "reserving" of undue quantities of contracts for the SBA. In turn, SBA takes many months to place the project with an 8(a) firm. For example, the Vicksburg District of the Corps of



Engineers in 1981 reserved its entire procurement list for a major part of the construction season for the 8(a) program. The total estimate for these projects was \$28 million and was "reserved" in an attempt to meet a \$6 million disadvantaged business utilization goal. Also in 1981, the Corps of Engineers Lower Mississippi Valley Division "reserved" 81 projects valued at \$87 million and the four Ohio River Districts "reserved" 89 contracts valued at \$78 million.

While much of this work was not awarded to 8(a) firms but was eventually returned to the open competitive market since the SBA was unable to supply 8(a) contractors for all of this work, the impact was still devastating. It is impossible for a contractor to do any future planning and to decide which projects he will bid if he cannot be sure what work will be available. Even if all of these contracts were eventually turned back for open competitive bid, "reserving" them en masse for an indefinite time period plays havoc with a contractor's projection of workforce needs and equipment requirements. This particularly impacts the small contractor who is not able to provide contingencies to cover these uncertainties by making use of his workforce and equipment on other jobs. Reducing the market this significantly, even for a short period of time, leads to the demise of many small contractors who have provided the government top quality work at the lowest price for years.

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## A CONSTRUCTIVE ROLE GOVERNMENT CAN PLAY

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Small business firms could be greatly assisted by the elimination of public construction agency competition via public force account construction. Small construction projects have proved to be the ideal training grounds for emerging small business enterprises. Yet, we are presented with an extraordinary contradiction: as a social policy the nation has attempted to encourage the growth and development of small business firms; but many cities, counties and other public agencies refuse to put small construction projects out for bid to the private sector, instead keeping them to be performed by taxpayer financed construction operations. This system, commonly referred to as public force account construction, removes from the marketplace hundreds of thousands of construction opportunities that are within the scope of small business qualifications and bonding capacities, and denies firms an enormous market for projects which are within their current capacities.

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## CONCLUSION AND RECOMMENDATIONS

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The construction industry is a highly competitive and open industry dominated by small family-owned businesses that work close to home in a fairly well defined geographic area. Construction is not dominated by a few firms, but by vigorous competitive bidding among many. That is, federal construction contracts generally must be awarded through competitive bidding procedures to the lowest responsible



bidder. This procedure assures intense competition within the industry, and assures that the project will be completed at the most economical cost to taxpayers. These factors make the construction industry one of the last true bastions of the free enterprise system.

This bastion, however, has been under a concerted, non-stop attack for some time from government imposed special preference procurement programs. These special preference procurement programs are contributing to the demise of the open competitive bid system in construction. Specifically, the small business set-aside program, and the small business 8(a) program are eliminating open competition, and increasing costs to the taxpayers.

Statistics provided by the Federal Procurement Data System on Federal construction contracts reveal that 60% of all Federal construction contract actions were unavailable for open, unrestricted competition in FY 1981 due to the Small Business set-aside and 8(a) program.

These set-asides are artificial props which do little but limit competition and increase the cost of public work construction. The characteristics of the construction industry are such that qualified contracting companies of all sizes are assured ample opportunity to obtain their "fair share" of federal outlays. Under open, unrestricted competition the smaller contractor secures more of the smaller contracts because of proximity to work, specialized requirements or many other circumstances, when it is more economical for a medium size or large size contractor to perform a contract and it would, therefore, likely be the low bidder. In denying these firms the opportunity to bid on set-aside contracts, the government is interfering with the free market system and increasing the cost of construction to the public.

Open, unrestricted competition in federal construction procurement has served the nation's taxpayers well. Taxpayers have the right to be assured that their tax monies are being spent in the most efficient and economic manner possible. Open unrestricted competition in federal construction procurement has always given that assurance.

The SBA set-aside and SBA 8(a) programs are changing all that. Through over-zealous advocacy and misguided implementation, these programs have for too long eliminated open unrestricted competition in federal construction procurement.

In order to restore open unrestricted competition to federal construction procurement and reduce federal construction costs to the government and the taxpaying public, the small business set-aside program and the small business 8(a) program must:

- Be legislatively eliminated from application in the construction industry.

At a minimum, the problems engendered by these special preference programs can be reduced by the following actions:

#### SMALL BUSINESS SET-ASIDE PROGRAM

- Revision of Federal Contract Awarding Agency regulation requirements for small business set-asides.
- An overall reduction in all agency's "goals" for utilization of the small business set-aside program.



- Placing a maximum limit of no more than \$2 million on the size of a construction contract which can be set-aside.

**SMALL BUSINESS 8(a) PROGRAM**

- Limiting the number of 8(a) contracts in construction.
- Placing a maximum limit of no more than \$2 million on the size of a construction contract which can be used in the 8(a) program.







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