

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

August 23, 2010

SENATE BILL NO. 2137

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 2137 with my recommendations for reconsideration.

This bill would amend and supplement current law concerning, among other things, outreach and training for women and minority groups in the construction trades and certain construction-related occupations. According to the legislative statement accompanying the bill, it is intended to "reconcile" certain provisions of two statutes that were enacted virtually simultaneously on the last day of the lame-duck legislative session earlier this year, immediately prior to the commencement of my administration.

More specifically, the bill would expand one law, P.L.2009, c.335 (C.52:40-1 et seq.), by extending the use of 0.5% of construction project funds set aside for outreach and training for women and minority group members to include not only construction trade occupations, but other occupations in the construction industry, such as management and engineering. The bill also would modify the scope of projects subject to the 0.5% set-aside under P.L.2009, c.335, to make it conform with the requirements of P.L.2009, c.313 (C.52:38-7) that the set-aside apply to local, as well as State, projects.

I support the concept of remedying demonstrated past discriminatory practices in public contracting as well as the legislative goal of reconciling ambiguous and overlapping laws. In this regard, the State of New Jersey's Construction Services Disparity Study, completed in October 2005, and the State of New Jersey Disparity Study of Procurement in Professional Services, Other Services, and Goods and Commodities, completed in June

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2005, clearly documented significant disparities between the female and minority-owned firms ready, willing, and able to do business with the State, and those firms actually awarded contracts by State departments, agencies, authorities, colleges, and universities. I am advised, however, that those studies did not extend their review and analyses to counties, municipalities, or other local units, nor did they consider trade and employment opportunities outside of the construction trades, such as engineering and management.

I am, therefore, concerned that the bill as currently drafted cannot be demonstrated in court to be narrowly tailored to remedy past discrimination, as required by federal law, insofar as it concerns local units other than State entities and occupations outside of the construction trades. To address this issue, I am recommending that the effective date of these provisions be delayed until such time as an adequate study or analysis is completed. Moreover, I am concerned that the provisions of this bill that would require payments by local units other than State entities may constitute an unfunded State mandate, particularly in the absence of any study or analysis demonstrating a narrowly tailored remedy for past discrimination by these units.

Accordingly, I herewith return Senate Bill No. 2137 and recommend that it be amended as follows:

Page 5, Section 3, Line 9:

After "immediately" insert "; provided, however, that the provisions of P.L. 2009, c.313 and P.L. 2009, c.335, as amended by this act, that concern (a) public bodies other than State entities and (b) occupations other than construction trade occupations shall remain inoperative until such time as the State Treasurer certifies to the Governor, the President of the

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Senate, and the Speaker of the General Assembly that a disparity study or other similar analysis of past conduct by local units with respect to minority and women contractors and by the State and local units with respect to occupations other than construction trade occupations has been completed."

Respectfully,

/s/ Chris Christie  
Governor

[seal]

Attest:

/s/Jeffrey S. Chiesa

Chief Counsel to the Governor