



General Assembly

February Session, 2000

Raised Bill No. 392

LCO No. 1634

Referred to Committee on Planning and Development

Introduced by:

(PD)

An Act Transferring Enforcement Of The Set-Aside Program From The Department Of Economic And Community Development To The Department Of Administrative Services And The Commission On Human Rights And Opportunities.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 32-9e of the general statutes, as amended by
2 section 1 of public act 99-233, is repealed and the following is
3 substituted in lieu thereof:

4 (a) As used in this section and sections 32-9f to 32-9h, inclusive, as
5 amended by [this act] public act 99-233, the following terms have the
6 following meanings:

7 (1) "Small contractor" means any contractor, subcontractor,
8 manufacturer or service company (A) which has been doing business
9 under the same ownership and management and has maintained its
10 principal place of business in the state, for a period of at least one year
11 immediately prior to the date of application for certification under this
12 section, (B) which had gross revenues not exceeding ten million dollars
13 in the most recently completed fiscal year prior to such application and

14 (C) at least fifty-one per cent of the ownership of which is held by a
15 person or persons who exercise operational authority over the daily
16 affairs of the business and have the power to direct the management
17 and policies and receive the beneficial interests of the business, except
18 that a nonprofit corporation shall be construed to be a small contractor
19 if such nonprofit corporation meets the requirements of subparagraphs
20 (A) and (B) of this subdivision.

21 (2) "State agency" means each state board, commission, department,
22 office, institution, council or other agency with the power to contract
23 for goods or services itself or through its head.

24 (3) "Minority business enterprise" means any small contractor (A)
25 fifty-one per cent or more of the capital stock, if any, or assets of which
26 are owned by a person or persons (i) who exercise operational
27 authority over the daily affairs of the enterprise, (ii) who have the
28 power to direct the management and policies and receive the beneficial
29 interest of the enterprise, and (iii) who are members of a minority, as
30 such term is defined in subsection (a) of section 32-9n, as amended by
31 [this act] public act 99-233, (B) who is an individual with a disability or
32 (C) which is a nonprofit corporation in which fifty-one per cent or
33 more of the persons who (i) exercise operational authority over the
34 enterprise and (ii) have the power to direct the management and
35 policies of the enterprise are members of a minority, as defined in this
36 subsection or are individuals with a disability.

37 (4) "Affiliated" means the relationship in which a person directly, or
38 indirectly through one or more intermediaries, controls, is controlled
39 by or is under common control with another person.

40 (5) "Control" means the power to direct or cause the direction of the
41 management and policies of any person, whether through the
42 ownership of voting securities, by contract or through any other direct
43 or indirect means. Control shall be presumed to exist if any person,
44 directly or indirectly, owns, controls, holds with the power to vote, or
45 holds proxies representing twenty per cent or more of any voting

46 securities of another person.

47 (6) "Person" means any individual, corporation, limited liability
48 company, partnership, association, joint stock company, business trust,
49 unincorporated organization or other entity.

50 (7) "Individual with a disability" means an individual (A) having a
51 physical impairment that substantially limits one or more of the major
52 life activities of the individual or (B) having a record of such an
53 impairment.

54 (8) "Nonprofit corporation" means a nonprofit corporation
55 incorporated pursuant to chapter 602 or any predecessor statutes
56 thereto.

57 (b) It is found and determined that there is a serious need to help
58 small contractors, minority business enterprises, nonprofit
59 organizations and individuals with disabilities to be considered for
60 and awarded state contracts for the construction, reconstruction or
61 rehabilitation of public buildings, the construction and maintenance of
62 highways and the purchase of goods and services. Accordingly, the
63 necessity, in the public interest and for the public benefit and good, of
64 the provisions of this section and sections 32-9f to 32-9p, inclusive, as
65 amended by [this act] public act 99-233, is declared as a matter of
66 legislative determination. Notwithstanding any provisions of the
67 general statutes to the contrary, and except as set forth herein, the head
68 of each state agency and each political subdivision of the state other
69 than a municipality shall set aside in each fiscal year, for award to
70 small contractors, on the basis of competitive bidding procedures,
71 contracts or portions of contracts for the construction, reconstruction or
72 rehabilitation of public buildings, the construction and maintenance of
73 highways and the purchase of goods and services. Eligibility of
74 nonprofit corporations under the provisions of this section shall be
75 limited to predevelopment contracts awarded by the Commissioner of
76 Economic and Community Development for housing projects. The
77 total value of such contracts or portions thereof to be set aside by each

78 such agency shall be at least twenty-five per cent of the total value of
79 all contracts let by the head of such agency in each fiscal year,
80 provided that neither: (1) A contract that may not be set aside due to a
81 conflict with a federal law or regulation; or (2) a contract for any goods
82 or services which [] have been determined by the Commissioner of
83 [Economic and Community Development] Administrative Services to
84 be not customarily available from or supplied by small contractors
85 shall be included, except that the head of any such agency may set
86 aside an amount based on the amount of all contracts not excluded
87 from the calculation which are anticipated to be let in any fiscal year if
88 the method of calculation for such year would result in a maximum
89 value of contracts to be set aside of less than twenty-five per cent of the
90 contracts anticipated to be let in such year or in a minimum value of
91 contracts to be set aside of greater than twenty-five per cent of the
92 contracts anticipated to be let in such year. Contracts or portions
93 thereof having a value of not less than twenty-five per cent of the total
94 value of all contracts or portions thereof to be set aside shall be
95 reserved for awards to minority business enterprises.

96 (c) The head of any state agency or political subdivision of the state
97 other than a municipality may, in lieu of setting aside any contract or
98 portions thereof, require any general or trade contractor or any other
99 entity authorized by such agency to award contracts, to set aside a
100 portion of any contract for subcontractors who are eligible for set-aside
101 contracts under this section. Nothing in this subsection shall be
102 construed to diminish the total value of contracts which are required to
103 be set aside by any state agency or political subdivision of the state
104 other than a municipality pursuant to this section.

105 (d) The heads of all state agencies and of each political subdivision
106 of the state other than a municipality shall notify the Commissioner of
107 Administrative Services of all contracts to be set aside pursuant to
108 subsection (b) or (c) of this section at the time that bid documents for
109 such contracts are made available to potential contractors.

110 (e) In no case shall the Commissioner of Administrative Services
111 recommend, nor shall any small contractor be awarded, any such
112 contract or contracts, the total amount of which exceeds ten million
113 dollars in any one fiscal year.

114 (f) The awarding authority shall require that a contractor or
115 subcontractor awarded a contract or a portion of a contract under this
116 section perform not less than fifteen per cent of the work with the
117 workforces of such contractor or subcontractor and shall require that
118 not less than twenty-five per cent of the work be performed by
119 contractors or subcontractors eligible for awards under this section. A
120 contractor awarded a contract or a portion of a contract under this
121 section shall not subcontract with any person with whom the
122 contractor is affiliated. No person who is affiliated with another person
123 shall be eligible for awards under this section if both affiliated persons
124 considered together would not qualify as a small contractor or a
125 minority business enterprise under subsection (a).

126 (g) The awarding authority may require that a contractor or
127 subcontractor awarded a contract or a portion of a contract under this
128 section furnish the following documentation: (1) A copy of the
129 certificate of incorporation, certificate of limited partnership,
130 partnership agreement or other organizational documents of the
131 contractor or subcontractor; (2) a copy of federal income tax returns
132 filed by the contractor or subcontractor for the previous year; and (3)
133 evidence of payment of fair market value for the purchase or lease by
134 the contractor or subcontractor of property or equipment from another
135 contractor who is not eligible for set-aside contracts under this section.

136 (h) The awarding authority or the Commissioner of Administrative
137 Services or the Commission on Human Rights and Opportunities may
138 conduct an audit of the financial, corporate and business records and
139 conduct an investigation of any small contractor or minority business
140 enterprise which applies for or is awarded a set-aside contract for the
141 purpose of determining eligibility for awards or compliance with the

142 requirements established under this section.

143 (i) The provisions of this section shall not apply to any state agency
144 or political subdivision of the state other than a municipality for which
145 the total value of all contracts or portions of contracts of the types
146 enumerated in subsection (b) of this section is anticipated to be equal
147 to ten thousand dollars or less.

148 (j) In lieu of a performance, bid, labor and materials or other
149 required bond, a contractor or subcontractor awarded a contract under
150 this section may provide to the awarding authority, and the awarding
151 authority, shall accept a letter of credit. Any such letter of credit shall
152 be in an amount equal to ten per cent of the contract for any contract
153 that is less than one hundred thousand dollars and in an amount equal
154 to twenty-five per cent of the contract for any contract that exceeds one
155 hundred thousand dollars.

156 (k) (1) Whenever the awarding agency has reason to believe that any
157 contractor or subcontractor awarded a set-aside contract has wilfully
158 violated any provision of this section, the awarding agency may send a
159 notice to such contractor or subcontractor by certified mail, return
160 receipt requested. Such notice shall include: (A) A reference to the
161 provision alleged to be violated; (B) a short and plain statement of the
162 matter asserted; (C) the maximum civil penalty that may be imposed
163 for such violation; and (D) the time and place for the hearing. Such
164 hearing shall be fixed for a date not earlier than fourteen days after the
165 notice is mailed.

166 (2) The awarding agency shall hold a hearing on the violation
167 asserted unless such contractor or subcontractor fails to appear. The
168 hearing shall be held in accordance with the provisions of chapter 54.
169 If, after the hearing, the awarding agency finds that the contractor or
170 subcontractor has wilfully violated any provision of this section, the
171 awarding agency shall suspend all set-aside contract payments to the
172 contractor or subcontractor and may, in its discretion, order that a civil
173 penalty not exceeding ten thousand dollars per violation be imposed

174 on the contractor or subcontractor. If such contractor or subcontractor
175 fails to appear for the hearing, the awarding agency may, as the facts
176 require, order that a civil penalty not exceeding ten thousand dollars
177 per violation be imposed on the contractor or subcontractor. The
178 awarding agency shall send a copy of any order issued pursuant to
179 this subsection by certified mail, return receipt requested, to the
180 contractor or subcontractor named in such order. The awarding agency
181 may cause proceedings to be instituted by the Attorney General for the
182 enforcement of any order imposing a civil penalty issued under this
183 subsection.

184 (l) On or before January 1, 2000, the Commissioner of
185 Administrative Services shall establish a process for certification of
186 small contractors and minority business enterprises as eligible for
187 set-aside contracts. Each certification shall be valid for a period not to
188 exceed two years. The application for certification shall be no longer
189 than six pages. Annually, the commissioner shall print a directory of
190 small contractors and minority business enterprises certified under this
191 section. State agencies shall be provided with updated directory
192 information quarterly.

193 (m) On or before September 30, 1995, and annually thereafter, each
194 state agency and each political subdivision of the state other than a
195 municipality setting aside contracts or portions of contracts shall
196 prepare a report establishing small and minority business set-aside
197 program goals for the twelve-month period beginning July first in the
198 same year. Each such report shall be submitted to the Commissioner of
199 [Economic and Community Development] Administrative Services,
200 the Commission on Human Rights and Opportunities and the
201 cochairpersons and ranking members of the joint standing committee
202 of the General Assembly having cognizance of matters relating to
203 planning and development.

204 (n) On or before November 1, 1995, and quarterly thereafter, each
205 state agency and each political subdivision of the state other than a

206 municipality setting aside contracts or portions of contracts shall
207 prepare a status report on the implementation and results of its small
208 business and minority business enterprise set-aside program goals
209 during the three-month period ending one month before the due date
210 for the report. Each report shall be submitted to the Commissioner of
211 [Economic and Community Development,] Administrative Services
212 and the Commission on Human Rights and Opportunities. The
213 Commission on Human Rights and Opportunities shall: (1) Monitor
214 the achievement of the annual goals established by each state agency
215 and political subdivision of the state other than a municipality; and (2)
216 prepare a quarterly report concerning such goal achievement. The
217 report shall be submitted to each state agency that submitted a report,
218 the Commissioner of Economic and Community Development, the
219 Commissioner of Administrative Services and the cochairpersons and
220 ranking members of the joint standing committee of the General
221 Assembly having cognizance of matters relating to planning and
222 development. Failure by any state agency or political subdivision of
223 the state other than a municipality to submit any reports required by
224 this section shall be a violation of section 46a-77.

225 (o) On or before January 1, 2000, and annually thereafter, the
226 Department of Administrative Services shall establish a precertification
227 list of small contractors and minority business enterprises who have
228 established a principal place of business in the state but have not
229 maintained such place of business for one year and are not in the
230 directory prepared pursuant to subsection (l) of this section. An
231 awarding agency may select a small contractor or minority business
232 enterprise from such precertification list only after such awarding
233 agency makes a good faith effort to find an eligible small contractor or
234 minority business enterprise in the directory and determines that no
235 small contractor or minority business enterprise is qualified to perform
236 the work required under the contract.

237 Sec. 2. This act shall take effect from its passage.

PD **Committee Vote:** Yea 16 Nay 0 JF C/R JUD
JUD **Committee Vote:** Yea 40 Nay 0 JF
GAE **Committee Vote:** Yea 21 Nay 0 JF