



House of Representatives

General Assembly

File No. 500

January Session, 2007

Substitute House Bill No. 5993

House of Representatives, April 16, 2007

The Committee on Government Administration and Elections reported through REP. CARUSO of the 126th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE DEPARTMENT OF ADMINISTRATIVE SERVICES' SMALL AND MINORITY BUSINESS SET-ASIDE PROGRAM.

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

1 Section 1. Section 4a-60g of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2007*):

3 (a) As used in this section and sections 4a-60h to 4a-60j, inclusive,
4 the following terms have the following meanings:

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

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

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

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

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

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

45 securities of another person.

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

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

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

56 (b) It is found and determined that there is a serious need to help
57 small contractors, minority business enterprises, nonprofit
58 organizations and individuals with disabilities to be considered for
59 and awarded state contracts for the construction, reconstruction or
60 rehabilitation of public buildings, the construction and maintenance of
61 highways and the purchase of goods and services. Accordingly, the
62 necessity, in the public interest and for the public benefit and good, of
63 the provisions of this section, sections 4a-60h to 4a-60j, inclusive, and
64 sections 32-9i to 32-9p, inclusive, is declared as a matter of legislative
65 determination. Notwithstanding any provisions of the general statutes
66 to the contrary, and except as set forth herein, the head of each state
67 agency and each political subdivision of the state other than a
68 municipality shall set aside in each fiscal year, for award to small
69 contractors, on the basis of competitive bidding procedures, contracts
70 or portions of contracts for the construction, reconstruction or
71 rehabilitation of public buildings, the construction and maintenance of
72 highways and the purchase of goods and services. Eligibility of
73 nonprofit corporations under the provisions of this section shall be
74 limited to predevelopment contracts awarded by the Commissioner of
75 Economic and Community Development for housing projects. The
76 total value of such contracts or portions thereof to be set aside by each
77 such agency shall be at least twenty-five per cent of the total value of

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

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

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

109 [(e) In no case shall the Commissioner of Administrative Services
110 recommend, nor shall any small contractor be awarded, any such

111 contract or contracts, the total amount of which exceeds ten million
112 dollars in any one fiscal year.]

113 [(f)] (e) The awarding authority shall require that a contractor or
114 subcontractor awarded a contract or a portion of a contract under this
115 section perform not less than fifteen per cent of the work with the
116 workforces of such contractor or subcontractor and shall require that
117 not less than twenty-five per cent of the work be performed by
118 contractors or subcontractors eligible for awards under this section. A
119 contractor awarded a contract or a portion of a contract under this
120 section shall not subcontract with any person with whom the
121 contractor is affiliated. No person who is affiliated with another person
122 shall be eligible for awards under this section if both affiliated persons
123 considered together would not qualify as a small contractor or a
124 minority business enterprise under subsection (a) of this section. The
125 awarding authority shall require that a contractor awarded a contract
126 pursuant to this section submit, in writing, an explanation of any
127 subcontract entered into with any person that is not eligible for the
128 award of a contract pursuant to this section, prior to the performance
129 of any work pursuant to such subcontract.

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

140 [(h)] (g) The awarding authority or the Commissioner of
141 Administrative Services or the Commission on Human Rights and
142 Opportunities may conduct an audit of the financial, corporate and
143 business records and conduct an investigation of any small contractor

144 or minority business enterprise which applies for or is awarded a
145 set-aside contract for the purpose of determining eligibility for awards
146 or compliance with the requirements established under this section.

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

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

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

172 (2) The awarding agency shall hold a hearing on the violation
173 asserted unless such contractor or subcontractor fails to appear. The
174 hearing shall be held in accordance with the provisions of chapter 54.
175 If, after the hearing, the awarding agency finds that the contractor or
176 subcontractor has wilfully violated any provision of this section, the

177 awarding agency shall suspend all set-aside contract payments to the
178 contractor or subcontractor and may, in its discretion, order that a civil
179 penalty not exceeding ten thousand dollars per violation be imposed
180 on the contractor or subcontractor. If such contractor or subcontractor
181 fails to appear for the hearing, the awarding agency may, as the facts
182 require, order that a civil penalty not exceeding ten thousand dollars
183 per violation be imposed on the contractor or subcontractor. The
184 awarding agency shall send a copy of any order issued pursuant to
185 this subsection by certified mail, return receipt requested, to the
186 contractor or subcontractor named in such order. The awarding agency
187 may cause proceedings to be instituted by the Attorney General for the
188 enforcement of any order imposing a civil penalty issued under this
189 subsection.

190 [(l)] (k) On or before January 1, 2000, the Commissioner of
191 Administrative Services shall establish a process for certification of
192 small contractors and minority business enterprises as eligible for
193 set-aside contracts. Each certification shall be valid for a period not to
194 exceed two years. [The] Any paper application for certification shall be
195 no longer than six pages. [Annually, the commissioner shall print a]
196 The Department of Administrative Services shall maintain on its web
197 site an updated directory of small contractors and minority business
198 enterprises certified under this section. [State agencies shall be
199 provided with updated directory information quarterly.]

200 [(m)] (l) On or before [September 30, 1995] August 30, 2007, and
201 annually thereafter, each state agency and each political subdivision of
202 the state other than a municipality setting aside contracts or portions of
203 contracts shall prepare a report establishing small and minority
204 business set-aside program goals for the twelve-month period
205 beginning July first in the same year. Each such report shall be
206 submitted to the Commissioner of Administrative Services, the
207 Commission on Human Rights and Opportunities and the
208 cochairpersons and ranking members of the joint standing committees
209 of the General Assembly having cognizance of matters relating to
210 planning and development and government administration and

211 elections.

212 [(n)] (m) On or before November 1, 1995, and quarterly thereafter,
213 each state agency and each political subdivision of the state other than
214 a municipality setting aside contracts or portions of contracts shall
215 prepare a status report on the implementation and results of its small
216 business and minority business enterprise set-aside program goals
217 during the three-month period ending one month before the due date
218 for the report. Each report shall be submitted to the Commissioner of
219 Administrative Services and the Commission on Human Rights and
220 Opportunities. Any state agency or political subdivision of the state,
221 other than a municipality, that achieves less than fifty per cent of its
222 small contractor and minority business enterprise set-aside program
223 goals by the end of the second reporting period in any twelve-month
224 period beginning on July first shall provide a written explanation to
225 the Commissioner of Administrative Services and the Commission on
226 Human Rights and Opportunities detailing how the agency or political
227 subdivision will achieve its goals in the final reporting period. The
228 Commission on Human Rights and Opportunities shall: (1) Monitor
229 the achievement of the annual goals established by each state agency
230 and political subdivision of the state other than a municipality; and (2)
231 prepare a quarterly report concerning such goal achievement. The
232 report shall be submitted to each state agency that submitted a report,
233 the Commissioner of Economic and Community Development, the
234 Commissioner of Administrative Services and the cochairpersons and
235 ranking members of the joint standing committees of the General
236 Assembly having cognizance of matters relating to planning and
237 development and government administration and elections. Failure by
238 any state agency or political subdivision of the state other than a
239 municipality to submit any reports required by this section shall be a
240 violation of section 46a-77.

241 [(o)] (n) On or before January 1, 2000, and annually thereafter, the
242 Department of Administrative Services shall establish a precertification
243 list of small contractors and minority business enterprises who have
244 established a principal place of business in the state but have not

245 maintained such place of business for one year and are not in the
 246 directory prepared pursuant to subsection [(l)] (k) of this section. An
 247 awarding agency may select a small contractor or minority business
 248 enterprise from such precertification list only after such awarding
 249 agency makes a good faith effort to find an eligible small contractor or
 250 minority business enterprise in the directory and determines that no
 251 small contractor or minority business enterprise is qualified to perform
 252 the work required under the contract.

253 [(p)] (o) Nothing in this section shall be construed to apply to the
 254 four janitorial contracts awarded pursuant to subsections (b) to (e),
 255 inclusive, of section 4a-82.

256 Sec. 2. (*Effective from passage*) The Commissioner of Administrative
 257 Services shall conduct a study concerning the establishment of new
 258 size standards under the small contractor and minority business
 259 enterprise set-aside program for small contractors that are based upon
 260 the business or industry sector in which such small contractor
 261 primarily operates. Not later than June 30, 2008, the commissioner, in
 262 accordance with section 11-4a of the general statutes, shall submit such
 263 study to the Governor and the joint standing committee of the General
 264 Assembly having cognizance of matters relating to government
 265 administration.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2007	4a-60g
Sec. 2	from passage	New section

GAE *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 08 \$	FY 09 \$
Department of Administrative Services	GF - Cost	95,000	95,000
Comptroller Misc. Accounts (Fringe Benefits)	GF - Cost	24,510	57,190

Note: GF=General Fund

Municipal Impact: None

Explanation

This bill makes several changes to the set-aside program for small contractors, minority business enterprises, individuals with disabilities and nonprofit corporations.

The bill makes changes to the definition of "small contractor," thus increasing the number of firms that will be eligible under the set-aside program. The bill raises the standard for what a "small business" is from \$10 million to \$15 million in annual gross revenues. The bill also includes individuals with mental impairments as qualified minority business enterprises.

The bill requires the DAS to study establishing size standards for small contractors under the set-aside program.

DAS will need two positions, a Processing Technician (\$45,000¹) and

¹ The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The estimated first year fringe benefit rate for a new employee as a percentage of average salary is 25.8%, effective July 1, 2006. The first year fringe benefit costs for new positions do not include pension costs. The state's pension contribution is based upon the prior year's certification by the actuary for the State Employees Retirement System (SERS). The SERS 2006-07 fringe benefit rate is 34.4%, which when combined with the non pension fringe benefit rate totals 60.2%.

an Accounts Examiner (\$50,000), to handle the significantly increased workload associated with the greater number of firms eligible for the set-aside program and to study establishing industry-based size standards.

The bill also eliminates obsolete language that created an alternative method for calculating the number of set-aside contracts at a time when the value of contracts to be set aside was a minimum of 15% and a maximum of 25% of the average of contracts awarded over three fiscal years. This provision has no fiscal impact.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sHB 5993*****AN ACT CONCERNING THE DEPARTMENT OF ADMINISTRATIVE SERVICES' SMALL AND MINORITY BUSINESS SET-ASIDE PROGRAM.*****SUMMARY:**

This bill makes several changes to the set-aside program for small contractors, minority business enterprises, individuals with disabilities and nonprofit corporations, including expanding the number of firms that may be eligible by changing the definition of "small contractor."

It requires awarding agencies to (1) explain how they will meet their program goals when they fail to do so, (2) obtain a written explanation from contractors that enter into contracts with subcontractors that are ineligible for the program, and (3) give the Commission on Human Rights and Opportunities (CHRO) a copy of hearing notices they send to alleged violators of the set-aside law.

It requires the Department of Administrative Services (DAS) to maintain a list of certified firms on its website, rather than in hard copy, and the commissioner to study size standards for small contractors.

The bill eliminates obsolete language that created an alternative method for calculating the number of set-aside contracts at a time when the value of contracts to be set aside was a minimum of 15% and a maximum of 25% of the average of contracts awarded over three fiscal years.

Finally, it makes technical changes.

EFFECTIVE DATE: The provision requiring the study is effective upon passage and the changes to the program are effective July 1, 2007.

SET-ASIDE PROGRAM**Set-Aside Goals**

The law requires state agencies and political subdivisions, other than municipalities, to set aside 25% of the contracts they let for construction, goods, and services each year to small contractors, including minority business enterprises. It excludes (1) any contract for which the set-aside conflicts with federal law or regulations and (2) goods and services not customarily available from or supplied by small contractors.

The bill requires agencies and political subdivisions to submit reports by August 30, rather than September 30, outlining their set-aside goals for the year. By law, they must submit the report to DAS, CHRO, and the chairpersons and ranking members of the Planning and Development and Government Administration and Elections Committees.

Under the bill, any agency that does not achieve at least 50% of its goals by the end of the second reporting period in any 12 months beginning on July 1 must give DAS and CHRO a detailed written explanation of how it will achieve its goals in the final reporting period.

Eligibility

The bill makes changes to the definition of “small contractor,” thus increasing the number of firms that may be eligible under the set-aside program. It does this by:

1. removing a requirement for firms to have the same ownership and management for at least one year before applying, thereby allowing those that have gone through ownership transfers to be eligible;
2. raising from \$10 to \$15 million the maximum gross revenues allowed in the most recently completed fiscal year; and
3. including small contractors who are individuals with mental, not

just physical, impairments as qualified minority business enterprises.

It also removes a prohibition against the DAS commissioner awarding a small contractor a contract or contracts totaling more than \$10 million in a fiscal year.

Explanation for Contracts with Ineligible Subcontractors

The bill requires an agency that awards a set-aside contract to obtain from that contractor, before any work begins, a written explanation detailing any subcontract it has with a firm that is not eligible under the set-aside program. By law, a contractor that is awarded a set-aside contract, together with set-aside-eligible subcontractors, must perform at least 25% of the work done under the contract.

Notice Requirements

The law permits awarding agencies, after notice and a hearing, to impose a civil penalty of up to \$10,000 per violation on contractors or subcontractors who willfully violate the set-aside law. The bill requires, rather than allows, them to send notice to a contractor or subcontractor they suspect commits such a violation. It also requires the awarding agency to send a copy of the notice to CHRO. By law, the notice must inform the firm of the maximum civil penalty for the alleged violation, that there will be a hearing, and of its time and date, among other things.

Directory of Certified Firms

The bill removes a requirement for DAS to print a directory of certified small contractors and minority business enterprises and provide updated copies to state agencies on a quarterly basis. Instead, it requires the department to maintain the updated directory on its website.

STUDY ON SIZE STANDARD FOR SMALL CONTRACTORS

The bill requires the DAS commissioner to study establishing size standards for small contractors under the set-aside program. She must

base the standards on the business or industry sector in which the contractors primarily operate and, by June 30, 2008, submit her report to the governor and the Government Administration and Elections Committee.

BACKGROUND

Related Bills

SB 530 (file 302) exempts regional planning organizations from the set-aside program.

sSB 1020, favorably reported by the Veterans Affairs Committee, establishes a separate set-aside program for disabled veteran contractors that mirrors the existing program for small contractors and minority business enterprises.

sHB 5975, favorably reported by the Government Administration and Elections Committee, makes similar changes to the set-aside program including increasing the number of firms that may be eligible and requiring contractors to offer an explanation when they enter into a subcontract with an ineligible subcontractor. It also requires the DAS commissioner to adopt regulations establishing size standards for contractors, subcontractors, manufacturers, and service companies.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 11 Nay 2 (03/30/2007)