



General Assembly

January Session, 2007

**Committee Bill No. 5975**

LCO No. 4345

\*04345HB05975GAE\*

Referred to Committee on Government Administration and Elections

Introduced by:  
(GAE)

**AN ACT ESTABLISHING A LOCAL SMALL BUSINESS VENDOR SET-ASIDE PROGRAM FOR STATE CONTRACTORS.**

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

1 Section 1. (NEW) (*Effective October 1, 2007*) (a) As used in this section  
2 and sections 2 to 4, inclusive, of this act, the following terms have the  
3 following meanings:

4 (1) "Small business vendor" means any contractor, subcontractor,  
5 manufacturer or service company (A) which has been doing business  
6 under the same ownership and management and has maintained its  
7 principal place of business in the state, for a period of at least one year  
8 immediately prior to the date of application for certification under this  
9 section, (B) which had gross revenues not exceeding five million  
10 dollars in the most recently completed fiscal year prior to such  
11 application, and (C) at least fifty-one per cent of the ownership of  
12 which is held by a person or persons who exercise operational  
13 authority over the daily affairs of the business and have the power to  
14 direct the management and policies and receive the beneficial interests  
15 of the business, except that a nonprofit corporation shall be construed

16 to be a small business vendor if such nonprofit corporation meets the  
17 requirements of subparagraphs (A) and (B) of this subdivision.

18 (2) "State agency" means each state board, commission, department,  
19 office, institution, council or other agency with the power to contract  
20 for goods or services itself or through its head and includes the  
21 Department of Administrative Services, the Board of Education  
22 Services for the Blind, The University of Connecticut and any  
23 constituent unit of higher education.

24 (3) "Affiliated" means the relationship in which a person directly, or  
25 indirectly through one or more intermediaries, controls, is controlled  
26 by or is under common control with another person.

27 (4) "Control" means the power to direct or cause the direction of the  
28 management and policies of any person, whether through the  
29 ownership of voting securities, by contract or through any other direct  
30 or indirect means. Control shall be presumed to exist if any person,  
31 directly or indirectly, owns, controls, holds with the power to vote, or  
32 holds proxies representing, twenty per cent or more of any voting  
33 securities of another person.

34 (5) "Person" means any individual, corporation, limited liability  
35 company, partnership, association, joint stock company, business trust,  
36 unincorporated organization or other entity.

37 (6) "Nonprofit corporation" means a nonprofit corporation  
38 incorporated pursuant to chapter 602 of the general statutes or any  
39 predecessor statutes thereto.

40 (b) It is found and determined that there is a serious need to help  
41 small business vendors to be considered for and awarded state  
42 contracts for the construction, reconstruction or rehabilitation of public  
43 buildings, the construction and maintenance of highways and the  
44 purchase of goods and services. Accordingly, the necessity, in the  
45 public interest and for the public benefit and good, of the provisions of

46 this section and sections 2 to 4, inclusive, is declared as a matter of  
47 legislative determination. Notwithstanding any provisions of the  
48 general statutes, and except as set forth herein, the head of each state  
49 agency and each political subdivision of the state other than a  
50 municipality shall set aside in each fiscal year for award to small  
51 business vendors, on the basis of competitive bidding procedures,  
52 contracts or portions of contracts for the construction, reconstruction or  
53 rehabilitation of public buildings, the construction and maintenance of  
54 highways and the purchase of goods and services. Eligibility of  
55 nonprofit corporations under the provisions of this section shall be  
56 limited to predevelopment contracts awarded by the Commissioner of  
57 Economic and Community Development for housing projects. The  
58 total value of such contracts or portions thereof to be set aside by each  
59 such agency shall be not less than fifteen per cent of the total value of  
60 all contracts let by the head of such agency in each fiscal year,  
61 provided that neither: (1) A contract that may not be set aside due to a  
62 conflict with a federal law or regulation; or (2) a contract for any goods  
63 or services which have been determined by the Commissioner of  
64 Administrative Services to be not customarily available from or  
65 supplied by small business vendors shall be included, except that the  
66 head of any such agency may set aside an amount based on the  
67 amount of all contracts not excluded from the calculation which are  
68 anticipated to be let in any fiscal year if the method of calculation for  
69 such year would result in a maximum value of contracts to be set aside  
70 of less than fifteen per cent of the contracts anticipated to be let in such  
71 year or in a minimum value of contracts to be set aside of greater than  
72 fifteen per cent of the contracts anticipated to be let in such year.

73 (c) The head of any state agency or political subdivision of the state  
74 other than a municipality may, in lieu of setting aside any contract or  
75 portions thereof, require any general or trade contractor or any other  
76 entity authorized by such agency to award contracts, to set aside a  
77 portion of any contract for subcontractors who are eligible for set-aside  
78 contracts under this section. Nothing in this subsection shall be  
79 construed to diminish the total value of contracts which are required to

80 be set aside by any state agency or political subdivision of the state  
81 other than a municipality pursuant to this section.

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

87 (e) In no case shall the Commissioner of Administrative Services  
88 recommend, nor shall any small business vendor be awarded, any  
89 such contract or contracts, the total amount of which exceeds five  
90 million dollars in any one fiscal year.

91 (f) The awarding authority shall require that a small business  
92 vendor or subcontractor awarded a contract or a portion of a contract  
93 under this section perform not less than fifteen per cent of the work  
94 with the workforces of such small business vendor or subcontractor  
95 and shall require that not less than twenty-five per cent of the work be  
96 performed by small business vendors or subcontractors eligible for  
97 awards under this section. A small business vendor awarded a  
98 contract or a portion of a contract under this section shall not  
99 subcontract with any person with whom the small business vendor is  
100 affiliated. No person who is affiliated with another person shall be  
101 eligible for awards under this section if both affiliated persons  
102 considered together would not qualify as a small business vendor  
103 under subsection (a) of this section.

104 (g) The awarding authority may require that a small business  
105 vendor or subcontractor awarded a contract or a portion of a contract  
106 under this section furnish the following documentation: (1) A copy of  
107 the certificate of incorporation, certificate of limited partnership,  
108 partnership agreement or other organizational documents of the  
109 contractor or subcontractor; (2) a copy of federal income tax returns  
110 filed by the contractor or subcontractor for the previous year; and (3)  
111 evidence of payment of fair market value for the purchase or lease by

112 the small business vendor or subcontractor of property or equipment  
113 from another contractor who is not eligible for set-aside contracts  
114 under this section.

115 (h) The awarding authority or the Commissioner of Administrative  
116 Services may conduct an audit of the financial, corporate and business  
117 records and conduct an investigation of any small business vendor that  
118 applies for or is awarded a set-aside contract for the purpose of  
119 determining eligibility for awards or compliance with the  
120 requirements established under this section.

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

126 (j) In lieu of a performance, bid, labor and materials or other  
127 required bond, a small business vendor or subcontractor awarded a  
128 contract under this section may provide to the awarding authority, and  
129 the awarding authority shall accept a letter of credit. Any such letter of  
130 credit shall be in an amount equal to ten per cent of the contract for  
131 any contract that is less than one hundred thousand dollars and in an  
132 amount equal to twenty-five per cent of the contract for any contract  
133 that exceeds one hundred thousand dollars.

134 (k) (1) Whenever the awarding agency has reason to believe that any  
135 small business vendor or subcontractor awarded a set-aside contract  
136 has wilfully violated any provision of this section, the awarding  
137 agency may send a notice to such small business vendor or  
138 subcontractor by certified mail, return receipt requested. Such notice  
139 shall include: (A) A reference to the provision alleged to be violated;  
140 (B) a short and plain statement of the matter asserted; (C) the  
141 maximum civil penalty that may be imposed for such violation; and  
142 (D) the time and place for the hearing. Such hearing shall be fixed for a  
143 date not earlier than fourteen days after the notice is mailed.

144 (2) The awarding agency shall hold a hearing on the violation  
145 asserted unless such contractor or subcontractor fails to appear. The  
146 hearing shall be held in accordance with the provisions of chapter 54 of  
147 the general statutes. If, after the hearing, the awarding agency finds  
148 that the small business vendor or subcontractor has wilfully violated  
149 any provision of this section, the awarding agency shall suspend all  
150 set-aside contract payments to the small business vendor or  
151 subcontractor and may, in its discretion, order that a civil penalty not  
152 exceeding ten thousand dollars per violation be imposed on the small  
153 business vendor or subcontractor. If such small business vendor or  
154 subcontractor fails to appear for the hearing, the awarding agency  
155 may, as the facts require, order that a civil penalty not exceeding ten  
156 thousand dollars per violation be imposed on the small business  
157 vendor or subcontractor. The awarding agency shall send a copy of  
158 any order issued pursuant to this subsection by certified mail, return  
159 receipt requested, to the small business vendor or subcontractor  
160 named in such order. The awarding agency may cause proceedings to  
161 be instituted by the Attorney General for the enforcement of any order  
162 imposing a civil penalty issued under this subsection.

163 (l) On or before January 1, 2008, the Commissioner of  
164 Administrative Services shall establish a process for certification of  
165 small business vendors as eligible for set-aside contracts. Each  
166 certification shall be valid for a period not to exceed two years. The  
167 application for certification shall be no longer than six pages.  
168 Annually, the commissioner shall print a directory of small business  
169 vendors certified under this section. State agencies shall be provided  
170 with updated directory information quarterly.

171 (m) On or before September 30, 2008, and annually thereafter, each  
172 state agency and each political subdivision of the state other than a  
173 municipality setting aside contracts or portions of contracts shall  
174 prepare a report establishing small business vendor set-aside program  
175 goals for the twelve-month period beginning July first in the same  
176 year. Each such report shall be submitted to the Commissioner of

177 Administrative Services and the cochairpersons and ranking members  
178 of the joint standing committees of the General Assembly having  
179 cognizance of matters relating to planning and development and  
180 government administration and elections.

181 (n) On or before November 1, 2008, and quarterly thereafter, each  
182 state agency and each political subdivision of the state other than a  
183 municipality setting aside contracts or portions of contracts shall  
184 prepare a status report on the implementation and results of its small  
185 business vendor set-aside program goals during the three-month  
186 period ending one month before the due date for the report. Each  
187 report shall be submitted to the Commissioner of Administrative  
188 Services. Failure by any state agency or political subdivision of the  
189 state other than a municipality to submit any report required by this  
190 section shall be a violation of section 46a-77 of the general statutes.

191 (o) On or before January 1, 2008, and annually thereafter, the  
192 Department of Administrative Services shall establish a precertification  
193 list of small business vendors who have established a principal place of  
194 business in the state but have not maintained such place of business  
195 for one year and are not in the directory prepared pursuant to  
196 subsection (l) of this section. An awarding agency may select a small  
197 business vendor from such precertification list only after such  
198 awarding agency makes a good faith effort to find an eligible small  
199 business vendor in the directory and determines that no small business  
200 vendor is qualified to perform the work required under the contract.

201 (p) Nothing in this section shall be construed to apply to the four  
202 janitorial contracts awarded pursuant to subsections (b) to (e),  
203 inclusive, of section 4a-82 of the general statutes.

204 Sec. 2. (NEW) (*Effective October 1, 2007*) (a) The Commissioner of  
205 Administrative Services shall be responsible for the administration of  
206 the set-aside program established in section 1 of this act. The  
207 commissioner shall conduct regular training sessions, as the  
208 commissioner deems necessary, for state agencies to explain the set-

209 aside program and to specify the factors that must be addressed in  
 210 calculating agency goals under the program. The commissioner shall  
 211 conduct informational workshops to inform businesses of set-aside  
 212 opportunities and responsibilities.

213 (b) The commissioner shall adopt regulations in accordance with the  
 214 provisions of chapter 54 of the general statutes to carry out the  
 215 purposes of sections 1 to 4, inclusive, of this act. Such regulations shall  
 216 include (1) guidelines for a legally acceptable format for, and content  
 217 of, letters of credit authorized under subsection (j) of section 1 of this  
 218 act; (2) procedures for random site visits to the place of business of an  
 219 applicant for certification at the time of application and at subsequent  
 220 times, as necessary, to ensure the integrity of the application process;  
 221 and (3) time limits for approval or disapproval of applications.

222 (c) On or before January 1, 2009, the Commissioner of  
 223 Administrative Services shall, by regulations adopted in accordance  
 224 with chapter 54 of the general statutes, establish a process to ensure  
 225 that small businesses vendors have fair access to all competitive  
 226 contracts outside of the set-aside program.

227 Sec. 3. (NEW) (*Effective October 1, 2007*) Nothing in sections 1 to 4,  
 228 inclusive, of this act shall be construed to interfere with the  
 229 responsibilities of the heads of all state agencies to directly negotiate  
 230 and approve all such contracts.

231 Sec. 4. (NEW) (*Effective October 1, 2007*) A small business vendor  
 232 shall receive payment on a contract awarded to him or her under the  
 233 provisions of sections 1 to 4, inclusive, of this act no later than thirty  
 234 days after the due date of any such payment on such contract.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2007</i>	New section
Sec. 2	<i>October 1, 2007</i>	New section
Sec. 3	<i>October 1, 2007</i>	New section

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Sec. 4	October 1, 2007	New section
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**Statement of Purpose:**

To allow small local businesses access to the state purchasing system.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*

Co-Sponsors: REP. PAWELKIEWICZ, 49th Dist.

H.B. 5975