



General Assembly

Substitute Bill No. 1020

January Session, 2007

* SB01020VA_CE_030607 *

AN ACT CONCERNING A STATE SET-ASIDE PROGRAM FOR CERTAIN DISABLED VETERANS.

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

1 Section 1. Section 4a-60g of the general statutes are repealed and the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, as
4 amended by this act, the following terms have the following meanings:

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

20 contractor.

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, (B) who is an
31 individual with a disability, or (C) which is a nonprofit corporation in
32 which fifty-one per cent or more of the persons who (i) exercise
33 operational authority over the enterprise, and (ii) have the power to
34 direct the management and policies of the enterprise are members of a
35 minority, as defined in [this] subsection (a) of section 32-9n, or are
36 individuals with a disability. "Minority business enterprise" does not
37 include a certified or precertified disabled veteran contractor.

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

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

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

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

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

58 (9) "Veteran with a disability" means any person who (A) served in
59 the armed forces, as defined in section 27-103, and has a service-
60 connected disability rated as ten per cent or more by the Veterans'
61 Administration which disability was incurred or aggravated in the line
62 of duty while on active duty with one of the armed forces, and (B) was
63 discharged or released from such service under conditions other than
64 dishonorable.

65 (10) "Disabled veteran contractor" means any contractor,
66 subcontractor, manufacturer or service company (A) which has been
67 doing business under the same ownership and management and has
68 maintained its principal place of business in the state for a period of at
69 least one year immediately prior to the date of application for
70 certification under this section, and (B) at least fifty-one per cent of the
71 ownership of which is held by a veteran with a disability or veterans
72 with a disability who exercise operational authority over the daily
73 affairs of the business and have the power to direct the management
74 and policies and receive the beneficial interests of the business.

75 (b) (1) It is found and determined that there is a serious need to help
76 small contractors, minority business enterprises, nonprofit
77 organizations, [and] individuals with disabilities and disabled veteran
78 contractors to be considered for and awarded state contracts for the
79 construction, reconstruction or rehabilitation of public buildings, the
80 construction and maintenance of highways and the purchase of goods
81 and services. Accordingly, the necessity, in the public interest and for
82 the public benefit and good, of the provisions of this section, sections

83 4a-60h to 4a-60j, inclusive, as amended by this act, and sections 32-9i to
84 32-9p, inclusive, is declared as a matter of legislative determination.

85 (2) Notwithstanding any provisions of the general statutes, [to the
86 contrary,] and except as set forth [herein] in this section, the head of
87 each state agency and each political subdivision of the state other than
88 a municipality shall set aside in each fiscal year, for award to small
89 contractors, on the basis of competitive bidding procedures, contracts
90 or portions of contracts for the construction, reconstruction or
91 rehabilitation of public buildings, the construction and maintenance of
92 highways and the purchase of goods and services. Eligibility of
93 nonprofit corporations under the provisions of this section shall be
94 limited to predevelopment contracts awarded by the Commissioner of
95 Economic and Community Development for housing projects. The
96 total value of such contracts or portions thereof to be set aside by each
97 such agency shall be at least twenty-five per cent of the total value of
98 all contracts let by the head of such agency in each fiscal year,
99 provided [that] neither: [(1)] (A) A contract that may not be set aside
100 due to a conflict with a federal law or regulation; or [(2)] (B) a contract
101 for any goods or services which have been determined by the
102 Commissioner of Administrative Services to be not customarily
103 available from or supplied by small contractors shall be included in
104 such calculation, except that the head of any such agency may set aside
105 an amount based on the amount of all contracts not excluded from the
106 calculation which are anticipated to be let in any fiscal year if the
107 method of calculation for such year would result in a maximum value
108 of contracts to be set aside of less than twenty-five per cent of the
109 contracts anticipated to be let in such year or in a minimum value of
110 contracts to be set aside of greater than twenty-five per cent of the
111 contracts anticipated to be let in such year. Contracts or portions
112 thereof having a value of not less than twenty-five per cent of the total
113 value of all contracts or portions thereof to be set aside shall be
114 reserved for awards to minority business enterprises.

115 (3) Notwithstanding any provisions of the general statutes, and
116 except as set forth in this section, the head of each state agency and

117 each political subdivision of the state other than a municipality shall
118 set aside in each fiscal year, for award to disabled veteran contractors,
119 on the basis of competitive bidding procedures, contracts or portions
120 of contracts for the construction, reconstruction or rehabilitation of
121 public buildings, the construction and maintenance of highways and
122 the purchase of goods and services. The total value of such contracts or
123 portions thereof to be set aside by each such agency shall be at least
124 three per cent of the total value of all contracts let by the head of such
125 agency in each fiscal year, provided a contract that may not be set
126 aside due to a conflict with a federal law or regulation shall not be
127 included in such calculation, except that the head of any such agency
128 may set aside an amount based on the amount of all contracts not
129 excluded from the calculation which are anticipated to be let in any
130 fiscal year if the method of calculation for such year would result in a
131 maximum value of contracts to be set aside of less than three per cent
132 of the contracts anticipated to be let in such year or in a minimum
133 value of contracts to be set aside of greater than three per cent of the
134 contracts anticipated to be let in such year. Contracts or portions
135 thereof having a value of not less than three per cent of the total value
136 of all contracts or portions thereof to be set aside shall be reserved for
137 awards to disabled veteran contractors.

138 (c) The head of any state agency or political subdivision of the state
139 other than a municipality may, in lieu of setting aside any contract or
140 portions thereof, require any general or trade contractor or any other
141 entity authorized by such agency to award contracts [,] to set aside a
142 portion of any contract for subcontractors who are eligible for set-aside
143 contracts under this section. Nothing in this subsection shall be
144 construed to diminish the total value of contracts which are required to
145 be set aside by any state agency or political subdivision of the state
146 other than a municipality pursuant to this section.

147 (d) The [heads of all state agencies] head of each state agency and of
148 each political subdivision of the state other than a municipality shall
149 notify the Commissioner of Administrative Services of all contracts to
150 be set aside pursuant to subsection (b) or (c) of this section at the time

151 that bid documents for such contracts are made available to potential
152 contractors.

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

157 (f) The awarding authority shall require that a contractor or
158 subcontractor awarded a contract or a portion of a contract under this
159 section perform not less than fifteen per cent of the work with the
160 workforces of such contractor or subcontractor and shall require that
161 not less than twenty-five per cent of the work be performed by
162 contractors or subcontractors eligible for awards under this section. A
163 contractor awarded a contract or a portion of a contract under this
164 section shall not subcontract with any person with whom the
165 contractor is affiliated. No person who is affiliated with another person
166 shall be eligible for awards under this section if both affiliated persons
167 considered together would not qualify as a small contractor, [or a]
168 minority business enterprise or disabled veteran contractor under
169 subsection (a) of this section.

170 (g) The awarding authority may require that a contractor or
171 subcontractor awarded a contract or a portion of a contract under this
172 section furnish the following documentation: (1) A copy of the
173 certificate of incorporation, certificate of limited partnership,
174 partnership agreement or other organizational documents of the
175 contractor or subcontractor; (2) a copy of federal income tax returns
176 filed by the contractor or subcontractor for the previous year; and (3)
177 evidence of payment of fair market value for the purchase or lease by
178 the contractor or subcontractor of property or equipment from another
179 contractor who is not eligible for set-aside contracts under this section.

180 (h) The awarding authority or the Commissioner of Administrative
181 Services or the Commission on Human Rights and Opportunities may
182 conduct an audit of the financial, corporate and business records and

183 conduct an investigation of any small contractor, [or] minority
184 business enterprise or disabled veteran contractor which applies for or
185 is awarded a set-aside contract for the purpose of determining
186 eligibility for awards or compliance with the requirements established
187 under this section.

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

193 (j) In lieu of a performance, bid, labor and materials or other
194 required bond, a contractor or subcontractor awarded a contract under
195 this section may provide to the awarding authority, and the awarding
196 authority shall accept, a letter of credit. Any such letter of credit shall
197 be in an amount equal to ten per cent of the contract for any contract
198 that is less than one hundred thousand dollars and in an amount equal
199 to twenty-five per cent of the contract for any contract that exceeds one
200 hundred thousand dollars.

201 (k) (1) Whenever the awarding agency has reason to believe that any
202 contractor or subcontractor awarded a set-aside contract has wilfully
203 violated any provision of this section, the awarding agency may send a
204 notice to such contractor or subcontractor by certified mail, return
205 receipt requested. Such notice shall include: (A) A reference to the
206 provision alleged to be violated; (B) a short and plain statement of the
207 matter asserted; (C) the maximum civil penalty that may be imposed
208 for such violation; and (D) the time and place for [the] a hearing on the
209 violation asserted. Such hearing shall be fixed for a date not earlier
210 than fourteen days after the notice is mailed.

211 (2) The awarding agency shall hold a hearing on the violation
212 asserted unless such contractor or subcontractor fails to appear. The
213 hearing shall be held in accordance with the provisions of chapter 54.
214 If, after the hearing, the awarding agency finds that the contractor or

215 subcontractor has wilfully violated any provision of this section, the
216 awarding agency shall suspend all set-aside contract payments to the
217 contractor or subcontractor and may, in its discretion, order that a civil
218 penalty not exceeding ten thousand dollars per violation be imposed
219 on the contractor or subcontractor. If such contractor or subcontractor
220 fails to appear for the hearing, the awarding agency may, as the facts
221 require, order that a civil penalty not exceeding ten thousand dollars
222 per violation be imposed on the contractor or subcontractor. The
223 awarding agency shall send a copy of any order issued pursuant to
224 this subsection by certified mail, return receipt requested, to the
225 contractor or subcontractor named in such order. The awarding agency
226 may cause proceedings to be instituted by the Attorney General for the
227 enforcement of any order imposing a civil penalty issued under this
228 subsection.

229 (l) On or before January 1, 2000, the Commissioner of
230 Administrative Services shall establish a process for certification of
231 small contractors and minority business enterprises as eligible for
232 set-aside contracts, and on or before January 1, 2008, the commissioner
233 shall establish a process for certification of disabled veteran contractors
234 as eligible for set-aside contracts. Each certification shall be valid for a
235 period not to exceed two years. The application for certification shall
236 be no longer than six pages. Annually, the commissioner shall print a
237 directory of (1) small contractors and minority business enterprises
238 certified under this section, and (2) disabled veteran contractors
239 certified under this section. [State] The commissioner shall provide
240 state agencies [shall be provided] with updated directory information
241 quarterly.

242 (m) On or before September 30, 1995, and annually thereafter, each
243 state agency and each political subdivision of the state other than a
244 municipality setting aside contracts or portions of contracts shall
245 prepare a report establishing small and minority business set-aside
246 program goals for the twelve-month period beginning July first in the
247 same year, and on or before September 30, 2008, each such agency and
248 political subdivision shall prepare a report establishing disabled

249 veteran contractor set-aside program goals for the twelve-month
250 period beginning July first in the same year. Each such report shall be
251 submitted to the Commissioner of Administrative Services, the
252 Commission on Human Rights and Opportunities and the
253 cochairpersons and ranking members of the joint standing committees
254 of the General Assembly having cognizance of matters relating to
255 planning and development and government administration. [and
256 elections.]

257 (n) On or before November 1, 1995, and quarterly thereafter, each
258 state agency and each political subdivision of the state, other than a
259 municipality, setting aside contracts or portions of contracts shall
260 prepare a status report on the implementation and results of its small
261 business and minority business enterprise set-aside program goals
262 during the three-month period ending one month before the due date
263 for the report. On or before November 1, 2008, and quarterly
264 thereafter, each state agency and each political subdivision of the state,
265 other than a municipality, setting aside contracts or portions of
266 contracts shall prepare a status report on the implementation and
267 results of its disabled veteran contractor set-aside program goals
268 during the three-month period ending one month before the due date
269 for the report. Each report shall be submitted to the Commissioner of
270 Administrative Services and the Commission on Human Rights and
271 Opportunities. The Commission on Human Rights and Opportunities
272 shall: (1) Monitor the achievement of the annual goals established by
273 each state agency and political subdivision of the state other than a
274 municipality; and (2) prepare a quarterly report concerning such goal
275 achievement. The report shall be submitted to each state agency that
276 submitted a report, the Commissioner of Economic and Community
277 Development, the Commissioner of Administrative Services and the
278 cochairpersons and ranking members of the joint standing committees
279 of the General Assembly having cognizance of matters relating to
280 planning and development and government administration. [and
281 elections.] Failure by any state agency or political subdivision of the
282 state other than a municipality to submit any reports required by this

283 section shall be a violation of section 46a-77.

284 (o) (1) On or before January 1, 2000, and annually thereafter, the
285 Department of Administrative Services shall establish a precertification
286 list of small contractors and minority business enterprises who have
287 established a principal place of business in the state but have not
288 maintained such place of business for one year and are not in the
289 directory prepared pursuant to subsection (l) of this section.

290 (2) On or before January 1, 2008, and annually thereafter, the
291 Department of Administrative Services shall establish a precertification
292 list of disabled veteran contractors who have established a principal
293 place of business in the state but have not maintained such place of
294 business for one year and are not in the directory prepared pursuant to
295 subsection (l) of this section.

296 (3) An awarding agency may select a small contractor, [or] minority
297 business enterprise or disabled veteran contractor from [such] a
298 precertification list only after such awarding agency makes a good
299 faith effort to find an eligible small contractor, [or] minority business
300 enterprise or disabled veteran contractor in the applicable directory
301 and determines that no small contractor, [or] minority business
302 enterprise or disabled veteran contractor in the applicable directory is
303 qualified to perform the work required under the contract.

304 (p) Nothing in this section shall be construed to apply to the four
305 janitorial contracts awarded pursuant to subsections (b) to (e),
306 inclusive, of section 4a-82.

307 Sec. 2. Subsection (a) of section 4a-57 of the general statutes is
308 repealed and the following is substituted in lieu thereof (*Effective July*
309 *1, 2007*):

310 (a) All purchases of, and contracts for, supplies, materials,
311 equipment and contractual services, except purchases and contracts
312 made pursuant to the provisions of subsection (b) of this section and
313 public utility services as provided in subsection (e) of this section shall

314 be based, when possible, on competitive bids or competitive
315 negotiation. The commissioner shall solicit competitive bids or
316 proposals by providing notice of the planned purchase in a form and
317 manner that the commissioner determines will maximize public
318 participation in the competitive bidding or competitive negotiation
319 process, including participation by small contractors and disabled
320 veteran contractors, as defined in section 4a-60g, as amended by this
321 act, and promote competition. In the case of an expenditure which is
322 estimated to exceed fifty thousand dollars, such notice shall be
323 inserted, at least five calendar days before the final date of submitting
324 bids or proposals, in two or more publications, at least one of which
325 shall be a major daily newspaper published in the state and shall be
326 posted on the Internet. Each notice of a planned purchase under this
327 subsection shall indicate the type of goods and services to be
328 purchased and the estimated value of the contract award. The notice
329 shall also contain a notice of state contract requirements concerning
330 nondiscrimination and affirmative action pursuant to section 4a-60
331 and, when applicable, requirements concerning the awarding of
332 contracts to small contractors, minority business enterprises,
333 individuals with a disability, disabled veteran contractors and
334 nonprofit corporations pursuant to section 4a-60g, as amended by this
335 act. Each bid and proposal shall be kept sealed or secured until opened
336 publicly at the time stated in the notice soliciting such bid or proposal.

337 Sec. 3. Subsections (b) and (c) of section 4a-60h of the general
338 statutes are repealed and the following is substituted in lieu thereof
339 (*Effective July 1, 2007*):

340 (b) The commissioner shall adopt regulations, in accordance with
341 [the provisions of] chapter 54, to carry out the purposes of sections 4a-
342 60g to 4a-60j, inclusive, as amended by this act. Such regulations shall
343 include (1) provisions concerning the application of the program to
344 individuals with a disability and veterans with a disability; (2)
345 guidelines for a legally acceptable format for, and content of, letters of
346 credit authorized under subsection (j) of section 4a-60g, as amended by
347 this act; (3) procedures for random site visits to the place of business of

348 an applicant for certification at the time of application and at
349 subsequent times, as necessary, to ensure the integrity of the
350 application process; and (4) time limits for approval or disapproval of
351 applications.

352 (c) On or before January 1, 1994, the Commissioner of
353 Administrative Services shall, by regulations adopted in accordance
354 with chapter 54, establish a process to ensure that small contractors,
355 small businesses and minority business enterprises have fair access to
356 all competitive contracts outside of the set-aside program. On or before
357 January 1, 2008, the commissioner shall, by regulations adopted in
358 accordance with chapter 54, establish a process to ensure that disabled
359 veteran contractors have fair access to all competitive contracts outside
360 of the set-aside program.

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

363 A small contractor or disabled veteran contractor shall receive
364 payment on a contract awarded to him or her under the provisions of
365 sections 4a-60g to 4a-60i, inclusive, as amended by this act, no later
366 than thirty days from the due date of any such payment on such
367 contract.

368 Sec. 5. Section 4a-61 of the general statutes is repealed and the
369 following is substituted in lieu thereof (*Effective July 1, 2007*):

370 (a) The Commissioner of Administrative Services, with the advice of
371 the Commissioner of Economic and Community Development, shall
372 adopt regulations, in accordance with chapter 54, establishing
373 procedures for the award of contracts concerning minority business
374 enterprises by the state or any political subdivision of the state other
375 than a municipality.

376 (b) The Commissioner of Administrative Services, with the advice of
377 the Commissioner of Economic and Community Development, shall
378 adopt regulations, in accordance with chapter 54, establishing

379 procedures for the award of contracts concerning disabled veteran
380 contractors by the state or any political subdivision of the state other
381 than a municipality.

382 Sec. 6. Section 4a-62 of the general statutes is repealed and the
383 following is substituted in lieu thereof (*Effective July 1, 2007*):

384 (a) (1) There is established a Minority Business Enterprise Review
385 Committee. The committee shall consist of two members of the House
386 of Representatives appointed by the speaker of the House, two
387 members of the House appointed by the minority leader of the House,
388 two members of the Senate appointed by the president pro tempore of
389 the Senate, and two members of the Senate appointed by the minority
390 leader of the Senate. The committee shall conduct an ongoing study of
391 contract awards, loans and bonds made or guaranteed by the state or
392 any political subdivision of the state other than a municipality for the
393 purpose of determining the extent of compliance with the provisions
394 of the general statutes concerning contract awards, loans and bonds for
395 minority business enterprises, including the set-aside program for such
396 business enterprises.

397 [(b)] (2) The committee may request any agency of the state
398 authorized to award public works contracts or to enter into purchase
399 of goods or services contracts to submit such information on
400 compliance with sections 4a-60 and 4a-60g, as amended by this act,
401 and at such times as the committee may require. The committee shall
402 consult with the Departments of Public Works, Transportation and
403 Economic Development and the Commission on Human Rights and
404 Opportunities concerning compliance with the state programs for
405 minority business enterprises. The committee shall report annually on
406 or before February first to the Joint Standing Committee on Legislative
407 Management on the results of its ongoing study and include its
408 recommendations, if any, for legislation.

409 (b) (1) There is established a Disabled Veteran Contractor Review
410 Committee. The committee shall consist of two members of the House

411 of Representatives appointed by the speaker of the House, two
 412 members of the House of Representatives appointed by the minority
 413 leader of the House, two members of the Senate appointed by the
 414 president pro tempore of the Senate, and two members of the Senate
 415 appointed by the minority leader of the Senate. The committee shall
 416 conduct an ongoing study of contract awards by the state or any
 417 political subdivision of the state other than a municipality for the
 418 purpose of determining the extent of compliance with the state set-
 419 aside program established under section 4a-60g, as amended by this
 420 act, concerning contract awards for disabled veteran contractors.

421 (2) The committee may request any agency of the state authorized to
 422 award public works contracts or to enter into purchase of goods or
 423 services contracts to submit such information on compliance with
 424 section 4a-60g, as amended by this act, and at such times as the
 425 committee may require. The committee shall consult with the
 426 Department of Administrative Services concerning compliance with
 427 the state set-aside program with respect to disabled veteran
 428 contractors. The committee shall report annually on or before February
 429 first to the Joint Standing Committee on Legislative Management on
 430 the results of its ongoing study and include its recommendations, if
 431 any, for legislation.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2007</i>	4a-60g
Sec. 2	<i>July 1, 2007</i>	4a-57(a)
Sec. 3	<i>July 1, 2007</i>	4a-60h(b) and (c)
Sec. 4	<i>July 1, 2007</i>	4a-60j
Sec. 5	<i>July 1, 2007</i>	4a-61
Sec. 6	<i>July 1, 2007</i>	4a-62

VA

Joint Favorable Subst. C/R

CE