



General Assembly

January Session, 2007

Amendment

LCO No. 8011

HB0599308011HDO

Offered by:

REP. URBAN, 43rd Dist.
REP. O'ROURKE, 32nd Dist.
REP. O'CONNOR, 35th Dist.
REP. JOHNSTON, 51st Dist.
REP. CARUSO, 126th Dist.
REP. SERRA, 33rd Dist.
REP. PAWELKIEWICZ, 49th Dist.

REP. HURLBURT, 53rd Dist.
REP. WILBER, 63rd Dist.
REP. HAMM, 34th Dist.
REP. JANOWSKI, 56th Dist.
SEN. DEFRONZO, 6th Dist.
SEN. SLOSSBERG, 14th Dist.

To: Subst. House Bill No. 5993

File No. 500

Cal. No. 436

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

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

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 Section 4a-60g of the general statutes is repealed and the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

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

7 (1) "Small contractor" means any contractor, subcontractor,
8 manufacturer or service company (A) [which] that has been doing

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

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

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

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 or mental impairment that substantially limits one or more of
53 the major life activities of the individual or (B) having a record of such
54 an impairment.

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

58 (b) It is found and determined that there is a serious need to help
59 small contractors, minority business enterprises, nonprofit
60 organizations and individuals with disabilities to be considered for
61 and awarded state contracts for the construction, reconstruction or
62 rehabilitation of public buildings, the construction and maintenance of
63 highways and the purchase of goods and services. Accordingly, the
64 necessity, in the public interest and for the public benefit and good, of
65 the provisions of this section, sections 4a-60h to 4a-60j, inclusive, and
66 sections 32-9i to 32-9p, inclusive, is declared as a matter of legislative
67 determination. Notwithstanding any provisions of the general statutes
68 to the contrary, and except as set forth herein, the head of each state
69 agency and each political subdivision of the state other than a
70 municipality shall set aside in each fiscal year, for award to small
71 contractors, on the basis of competitive bidding procedures, contracts
72 or portions of contracts for the construction, reconstruction or

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

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

106 (d) The heads of all state agencies and of each political subdivision

107 of the state other than a municipality shall notify the Commissioner of
108 Administrative Services of all contracts to be set aside pursuant to
109 subsection (b) or (c) of this section at the time that bid documents for
110 such contracts are made available to potential contractors.

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

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

132 [(g)] (f) The awarding authority may require that a contractor or
133 subcontractor awarded a contract or a portion of a contract under this
134 section furnish the following documentation: (1) A copy of the
135 certificate of incorporation, certificate of limited partnership,
136 partnership agreement or other organizational documents of the
137 contractor or subcontractor; (2) a copy of federal income tax returns
138 filed by the contractor or subcontractor for the previous year; and (3)
139 evidence of payment of fair market value for the purchase or lease by

140 the contractor or subcontractor of property or equipment from another
141 contractor who is not eligible for set-aside contracts under this section.

142 [(h)] (g) The awarding authority or the Commissioner of
143 Administrative Services or the Commission on Human Rights and
144 Opportunities may conduct an audit of the financial, corporate and
145 business records and conduct an investigation of any small contractor
146 or minority business enterprise which applies for or is awarded a
147 set-aside contract for the purpose of determining eligibility for awards
148 or compliance with the requirements established under this section.

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

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

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

172 awarding authority shall send a copy of such notice to the Commission
173 on Human Rights and Opportunities.

174 (2) The awarding [agency] authority shall hold a hearing on the
175 violation asserted unless such contractor or subcontractor fails to
176 appear. The hearing shall be held in accordance with the provisions of
177 chapter 54. If, after the hearing, the awarding [agency] authority finds
178 that the contractor or subcontractor has wilfully violated any provision
179 of this section, the awarding [agency] authority shall suspend all
180 set-aside contract payments to the contractor or subcontractor and
181 may, in its discretion, order that a civil penalty not exceeding ten
182 thousand dollars per violation be imposed on the contractor or
183 subcontractor. If such contractor or subcontractor fails to appear for
184 the hearing, the awarding [agency] authority may, as the facts require,
185 order that a civil penalty not exceeding ten thousand dollars per
186 violation be imposed on the contractor or subcontractor. The awarding
187 [agency] authority shall send a copy of any order issued pursuant to
188 this subsection by certified mail, return receipt requested, to the
189 contractor or subcontractor named in such order. The awarding
190 [agency] authority may cause proceedings to be instituted by the
191 Attorney General for the enforcement of any order imposing a civil
192 penalty issued under this subsection.

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

203 [(m)] (l) On or before [September 30, 1995] August 30, 2007, and
204 annually thereafter, each state agency and each political subdivision of

205 the state other than a municipality setting aside contracts or portions of
206 contracts shall prepare a report establishing small and minority
207 business set-aside program goals for the twelve-month period
208 beginning July first in the same year. Each such report shall be
209 submitted to the Commissioner of Administrative Services, the
210 Commission on Human Rights and Opportunities and the
211 cochairpersons and ranking members of the joint standing committees
212 of the General Assembly having cognizance of matters relating to
213 planning and development and government administration and
214 elections.

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

239 Assembly having cognizance of matters relating to planning and
 240 development and government administration and elections. Failure by
 241 any state agency or political subdivision of the state other than a
 242 municipality to submit any reports required by this section shall be a
 243 violation of section 46a-77.

244 [(o)] (n) On or before January 1, 2000, and annually thereafter, the
 245 Department of Administrative Services shall establish a precertification
 246 list of small contractors and minority business enterprises who have
 247 established a principal place of business in the state but have not
 248 maintained such place of business for one year and are not in the
 249 directory prepared pursuant to subsection [(l)] (k) of this section. An
 250 awarding agency may select a small contractor or minority business
 251 enterprise from such precertification list only after such awarding
 252 agency makes a good faith effort to find an eligible small contractor or
 253 minority business enterprise in the directory and determines that no
 254 small contractor or minority business enterprise is qualified to perform
 255 the work required under the contract.

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

259 Sec. 2. Section 10-29a of the general statutes is amended by adding
 260 subdivision (52) as follows (*Effective from passage*):

261 (NEW) (52) The Governor shall proclaim the month of May to be
 262 Woman-Owned Business Month to honor the contribution that
 263 women-owned businesses make to our state. Suitable exercises shall be
 264 held in the State Capitol and elsewhere as the Governor designates for
 265 the observance of the month."

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>from passage</i>	10-29a