



Senate

General Assembly

File No. 513

February Session, 2008

Substitute Senate Bill No. 537

Senate, April 7, 2008

The Committee on Government Administration and Elections reported through SEN. SLOSSBERG of the 14th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING MUNICIPAL SET-ASIDE PROGRAMS.

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

1 Section 1. Section 4a-60g of the 2008 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective October 1, 2008*):

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

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

14 which is held by a person or persons who exercise operational
15 authority over the daily affairs of the business and have the power to
16 direct the management and policies and receive the beneficial interests
17 of the business, except that a nonprofit corporation shall be construed
18 to be a small contractor if such nonprofit corporation meets the
19 requirements of subparagraphs (A) and (B) of 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. Contracts or portions
84 thereof having a value of not less than twenty-five per cent of the total
85 value of all contracts or portions thereof to be set aside shall be
86 reserved for awards to minority business enterprises.

87 (c) The head of any state agency or political subdivision of the state
88 [other than a municipality] may, in lieu of setting aside any contract or
89 portions thereof, require any general or trade contractor or any other
90 entity authorized by such agency to award contracts, to set aside a
91 portion of any contract for subcontractors who are eligible for set-aside
92 contracts under this section. Nothing in this subsection shall be
93 construed to diminish the total value of contracts which are required to
94 be set aside by any state agency or political subdivision of the state
95 [other than a municipality] pursuant to this section.

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

101 (e) The awarding authority shall require that a contractor or
102 subcontractor awarded a contract or a portion of a contract under this
103 section perform not less than fifteen per cent of the work with the
104 workforces of such contractor or subcontractor and shall require that
105 not less than twenty-five per cent of the work be performed by
106 contractors or subcontractors eligible for awards under this section. A
107 contractor awarded a contract or a portion of a contract under this
108 section shall not subcontract with any person with whom the
109 contractor is affiliated. No person who is affiliated with another person
110 shall be eligible for awards under this section if both affiliated persons
111 considered together would not qualify as a small contractor or a

112 minority business enterprise under subsection (a) of this section. The
113 awarding authority shall require that a contractor awarded a contract
114 pursuant to this section submit, in writing, an explanation of any
115 subcontract to such contract that is entered into with any person that is
116 not eligible for the award of a contract pursuant to this section, prior to
117 the performance of any work pursuant to such subcontract.

118 (f) The awarding authority may require that a contractor or
119 subcontractor awarded a contract or a portion of a contract under this
120 section furnish the following documentation: (1) A copy of the
121 certificate of incorporation, certificate of limited partnership,
122 partnership agreement or other organizational documents of the
123 contractor or subcontractor; (2) a copy of federal income tax returns
124 filed by the contractor or subcontractor for the previous year; and (3)
125 evidence of payment of fair market value for the purchase or lease by
126 the contractor or subcontractor of property or equipment from another
127 contractor who is not eligible for set-aside contracts under this section.

128 (g) The awarding authority or the Commissioner of Administrative
129 Services or the Commission on Human Rights and Opportunities may
130 conduct an audit of the financial, corporate and business records and
131 conduct an investigation of any small contractor or minority business
132 enterprise which applies for or is awarded a set-aside contract for the
133 purpose of determining eligibility for awards or compliance with the
134 requirements established under this section.

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

140 (i) In lieu of a performance, bid, labor and materials or other
141 required bond, a contractor or subcontractor awarded a contract under
142 this section may provide to the awarding authority, and the awarding
143 authority shall accept a letter of credit. Any such letter of credit shall
144 be in an amount equal to ten per cent of the contract for any contract

145 that is less than one hundred thousand dollars and in an amount equal
146 to twenty-five per cent of the contract for any contract that exceeds one
147 hundred thousand dollars.

148 (j) (1) Whenever the awarding authority has reason to believe that
149 any contractor or subcontractor awarded a set-aside contract has
150 wilfully violated any provision of this section, the awarding authority
151 shall send a notice to such contractor or subcontractor by certified
152 mail, return receipt requested. Such notice shall include: (A) A
153 reference to the provision alleged to be violated; (B) a short and plain
154 statement of the matter asserted; (C) the maximum civil penalty that
155 may be imposed for such violation; and (D) the time and place for the
156 hearing. Such hearing shall be fixed for a date not earlier than fourteen
157 days after the notice is mailed. The awarding authority shall send a
158 copy of such notice to the Commission on Human Rights and
159 Opportunities.

160 (2) The awarding authority shall hold a hearing on the violation
161 asserted unless such contractor or subcontractor fails to appear. The
162 hearing shall be held in accordance with the provisions of chapter 54.
163 If, after the hearing, the awarding authority finds that the contractor or
164 subcontractor has wilfully violated any provision of this section, the
165 awarding authority shall suspend all set-aside contract payments to
166 the contractor or subcontractor and may, in its discretion, order that a
167 civil penalty not exceeding ten thousand dollars per violation be
168 imposed on the contractor or subcontractor. If such contractor or
169 subcontractor fails to appear for the hearing, the awarding authority
170 may, as the facts require, order that a civil penalty not exceeding ten
171 thousand dollars per violation be imposed on the contractor or
172 subcontractor. The awarding authority shall send a copy of any order
173 issued pursuant to this subsection by certified mail, return receipt
174 requested, to the contractor or subcontractor named in such order. The
175 awarding authority may cause proceedings to be instituted by the
176 Attorney General for the enforcement of any order imposing a civil
177 penalty issued under this subsection.

178 (k) On or before January 1, 2000, the Commissioner of
179 Administrative Services shall establish a process for certification of
180 small contractors and minority business enterprises as eligible for
181 set-aside contracts. Each certification shall be valid for a period not to
182 exceed two years. Any paper application for certification shall be no
183 longer than six pages. The Department of Administrative Services shall
184 maintain on its web site an updated directory of small contractors and
185 minority business enterprises certified under this section.

186 (l) On or before August 30, 2007, and annually thereafter, each state
187 agency and each political subdivision of the state [other than a
188 municipality] setting aside contracts or portions of contracts shall
189 prepare a report establishing small and minority business set-aside
190 program goals for the twelve-month period beginning July first in the
191 same year. Each such report shall be submitted to the Commissioner of
192 Administrative Services, the Commission on Human Rights and
193 Opportunities and the cochairpersons and ranking members of the
194 joint standing committees of the General Assembly having cognizance
195 of matters relating to planning and development and government
196 administration and elections.

197 (m) On or before November 1, 1995, and quarterly thereafter, each
198 state agency and each political subdivision of the state [other than a
199 municipality] setting aside contracts or portions of contracts shall
200 prepare a status report on the implementation and results of its small
201 business and minority business enterprise set-aside program goals
202 during the three-month period ending one month before the due date
203 for the report. Each report shall be submitted to the Commissioner of
204 Administrative Services and the Commission on Human Rights and
205 Opportunities. Any state agency or political subdivision of the state,
206 [other than a municipality,] that achieves less than fifty per cent of its
207 small contractor and minority business enterprise set-aside program
208 goals by the end of the second reporting period in any twelve-month
209 period beginning on July first shall provide a written explanation to
210 the Commissioner of Administrative Services and the Commission on
211 Human Rights and Opportunities detailing how the agency or political

212 subdivision will achieve its goals in the final reporting period. The
213 Commission on Human Rights and Opportunities shall: (1) Monitor
214 the achievement of the annual goals established by each state agency
215 and political subdivision of the state; [other than a municipality;] and
216 (2) prepare a quarterly report concerning such goal achievement. The
217 report shall be submitted to each state agency that submitted a report,
218 the Commissioner of Economic and Community Development, the
219 Commissioner of Administrative Services and the cochairpersons and
220 ranking members of the joint standing committees of the General
221 Assembly having cognizance of matters relating to planning and
222 development and government administration and elections. Failure by
223 any state agency or political subdivision of the state [other than a
224 municipality] to submit any reports required by this section shall be a
225 violation of section 46a-77.

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

238 (o) Nothing in this section shall be construed to apply to the four
239 janitorial contracts awarded pursuant to subsections (b) to (e),
240 inclusive, of section 4a-82 of the 2008 supplement to the general
241 statutes.

242 Sec. 2. (*Effective October 1, 2008*) Section 7-148u of the 2008
243 supplement to the general statutes is repealed.

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 09 \$	FY 10 \$
Department of Administrative Services	GF - Cost	142,000	189,000
Human Rights & Opportunities, Com.	GF - Cost	27,750	55,500
Comptroller Misc. Accounts (Fringe Benefits) ¹	GF - Cost	43,000	143,000

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 09 \$	FY 10 \$
All Municipalities	STATE MANDATE - Cost	See Below	See Below

Explanation

The bill requires municipalities to participate in the state's small and minority business set-aside program and eliminates municipalities' discretion to establish their own set-aside program.

Under the bill, municipalities must comply with the state's requirements and procedures for bidding and awarding set-aside contracts. Businesses must be certified by the Department of Administrative Services (DAS) before they can bid on a municipal set-aside contract.

¹ The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The first year fringe benefit costs for new positions do not include pension costs. The estimated first year fringe benefit rate as a percentage of payroll is 25.36%. 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 fringe benefit rate is 33.27%, which when combined with the rate for non-pension fringe benefits totals 58.63%.

DAS will incur significant costs to bring municipalities into the state's small and minority business set-aside program. DAS currently administers set-aside compliance for 95 agencies and approximately 24 political subdivisions with 2 full-time positions. The bill adds 169 municipalities to this program. DAS would need to hire three Account Examiner positions (at \$63,000 per position, plus fringe benefits) to handle the increased workload. The FY 09 cost to DAS is estimated to be \$142,000, plus fringe benefits, based on the municipal set-aside program operating for nine months.

DAS and municipalities may also incur increased information technology costs because the state's budget and accounting system, CORE-CT, is not compatible with the various accounting systems municipalities utilize.

Requiring municipalities to participate in the state's small and minority business set-aside program may increase the costs of certain contracts if contracts that would otherwise be awarded to the lowest qualified bidder are awarded to small and minority business contractors instead.

The bill also requires municipalities to submit status reports to DAS and the Commission on Human Rights and Opportunities (CHRO) and be audited by them. CHRO will need to hire one Human Rights Officer (with an annualized salary of \$55,500, plus fringe benefits) to handle the bill's municipal set-aside audit requirements. The FY 09 cost to CHRO is estimated to be \$27,750, plus fringe benefits, based on the municipal set-aside audit program operating for six months.

The Out Years

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

OLR Bill Analysis**sSB 537*****AN ACT CONCERNING MUNICIPAL SET-ASIDE PROGRAMS.*****SUMMARY:**

This bill requires municipalities to participate in the state's small and minority business set-aside program and correspondingly eliminates their discretion to establish one on their own. The program requires state agencies and other state entities to set aside contracts for bidding exclusively by small and minority-owned businesses. The contracts may be for constructing roads and buildings or providing goods and services.

Under the bill, municipalities must comply with the state's requirements and procedures for bidding and awarding set-aside contracts. Consequently, businesses must be certified by the Department of Administrative Services (DAS) before they can bid on a municipal set-aside contract. And municipalities must submit status reports to DAS and the Commission on Human Rights and Opportunities (CHRO) and be audited by them.

Presumably, municipalities would also have to set the statutory set-aside goals. Current law requires state agencies and political subdivisions, except municipalities, to set aside contracts, but imposes the method for calculating set-aside goals only on state agencies. In practice, non municipal political subdivisions apply the same method. So do municipalities that choose to set aside contracts.

EFFECTIVE DATE: October 1, 2008

SET-ASIDE GOALS

The law imposes the same set-aside goals on state entities and municipalities that choose to establish a set-aside program. Both must

annually set-aside at least 25% of the contracts for bidding by certified small businesses. They must also set aside 25% of that amount (6.25%) for business by certified minority owned businesses. The law exempts state agencies from these requirements if the total value of their contracts is less than \$10,000 in any given year.

ADMINISTRATIVE OPTIONS AND REQUIREMENTS

By requiring municipalities to participate in the state set-aside program, the bill also requires them to comply with several administrative options and requirements that currently apply only to state agencies. These include:

1. requiring general contractors to set-aside subcontracts for certified small and minority-owned businesses;
2. notifying the DAS commissioner about set-aside contract awards;
3. requiring set-aside contractors to do at least 15% of the work with their own forces and at least 25% with certified contractors;
4. requiring set-aside contractors to submit specific documents;
5. being audited by DAS and CHRO;
6. accepting letters of credit in lieu of bid, performance, and other bonds;
7. following the statutory procedure for enforcing set-aside requirements; and
8. submitting quarterly and annual progress reports to DAS, CHRO, and two legislative committees.

BACKGROUND

Set-Aside Business Certification Requirements

To qualify as a “small contractor” under existing law, a business must be a contractor, subcontractor, manufacturer, or service company

that (1) has done business and maintained its principal business place in Connecticut for at least a year before it applies for certification; (2) grossed no more than \$15 million in its most recent fiscal year; and (3) is at least 51% owned by one or more people who actively manage its daily affairs and have the power to direct its policies and management. The law includes nonprofit corporations that meet the first two criteria with respect to predevelopment contracts for housing projects.

Minority business enterprises are small contractors of which members of ethnic minorities, people with disabilities, nonprofit corporations, and women (1) own at least 51% of the assets, (2) are active in its daily affairs, and (3) have the power to direct its management and policies. Minority means: Black Americans; Hispanic Americans; people from the Iberian Peninsula, including Portugal; women; Asian Pacific Americans and Pacific islanders; and American Indians.

Related Bill

Among other things, sSB 259 establishes a separate set-aside program for contractors who are disabled veterans that mirrors an existing small contractor-minority set-aside program in most ways. The Veterans Affairs, Commerce, and Government Administration and Election committees reported the bill.

COMMITTEE ACTION

Planning and Development Committee

Joint Favorable Change of Reference
 Yea 17 Nay 3 (03/12/2008)

Government Administration and Elections Committee

Joint Favorable
 Yea 8 Nay 3 (03/19/2008)