



General Assembly

February Session, 2008

Raised Bill No. 537

LCO No. 2648

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Referred to Committee on Planning and Development

Introduced by:
(PD)

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2 statutes is repealed and the following is substituted in lieu thereof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 (9) "Municipality" means any town, city or borough, consolidated
57 town and city or consolidated town and borough.

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. Contracts or portions
86 thereof having a value of not less than twenty-five per cent of the total
87 value of all contracts or portions thereof to be set aside shall be
88 reserved for awards to minority business enterprises.

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

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

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

112 shall be eligible for awards under this section if both affiliated persons
113 considered together would not qualify as a small contractor or a
114 minority business enterprise under subsection (a) of this section. The
115 awarding authority shall require that a contractor awarded a contract
116 pursuant to this section submit, in writing, an explanation of any
117 subcontract to such contract that is entered into with any person that is
118 not eligible for the award of a contract pursuant to this section, prior to
119 the performance of any work pursuant to such subcontract.

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

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

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

142 (i) In lieu of a performance, bid, labor and materials or other
143 required bond, a contractor or subcontractor awarded a contract under

144 this section may provide to the awarding authority, and the awarding
145 authority shall accept a letter of credit. Any such letter of credit shall
146 be in an amount equal to ten per cent of the contract for any contract
147 that is less than one hundred thousand dollars and in an amount equal
148 to twenty-five per cent of the contract for any contract that exceeds one
149 hundred thousand dollars.

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

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

177 awarding authority may cause proceedings to be instituted by the
178 Attorney General for the enforcement of any order imposing a civil
179 penalty issued under this subsection.

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

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

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

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

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

240 (o) Nothing in this section shall be construed to apply to the four
241 janitorial contracts awarded pursuant to subsections (b) to (e),

242 inclusive, of section 4a-82 of the 2008 supplement to the general
243 statutes.

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

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2008</i>	4a-60g
Sec. 2	<i>October 1, 2008</i>	Repealer section

Statement of Purpose:

To apply the state set-aside requirements to municipalities.

[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.]