



General Assembly

**Substitute Bill No. 537**

February Session, 2008

\* SB00537GAE\_\_031908\_\_ \*

**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2 statutes is repealed and the following is substituted in lieu thereof  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.

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 Legislative Commissioners:**

In Subsec. (a) of Section 1, Subdiv. (9) was deleted for accuracy.

**PD**      *Joint Favorable C/R*      GAE

**GAE**      *Joint Favorable Subst.-LCO*