



Substitute Senate Bill No. 1127

Public Act No. 09-158

**AN ACT CONCERNING CERTAIN STATE CONTRACTING
NONDISCRIMINATION REQUIREMENTS.**

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

Section 1. Section 4a-60 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) Every contract to which the state or any political subdivision of the state other than a municipality is a party shall contain the following provisions:

(1) The contractor agrees and warrants that in the performance of the contract such contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the state of Connecticut; [. The] and the contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed,

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age, marital status, national origin, ancestry, sex, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such contractor that such disability prevents performance of the work involved;

(2) [the] The contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the commission;

(3) [the] The contractor agrees to provide each labor union or representative of workers with which such contractor has a collective bargaining agreement or other contract or understanding and each vendor with which such contractor has a contract or understanding, a notice to be provided by the commission advising the labor union or workers' representative of the contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment;

(4) [the] The contractor agrees to comply with each provision of this section and sections 46a-68e and 46a-68f and with each regulation or relevant order issued by said commission pursuant to sections 46a-56, 46a-68e and 46a-68f; and

(5) [the] The contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the contractor as relate to the provisions of this section and section 46a-56.

(b) If the contract is a public works contract, the contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works project.

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(c) (1) Prior to entering into [the] a contract valued at less than fifty thousand dollars for each year of the contract, the contractor shall provide the state or such political subdivision of the state with [documentation] a written representation that complies with the nondiscrimination agreement and warranty under subdivision (1) of subsection (a) of this section.

(2) Prior to entering into a contract valued at fifty thousand dollars or more for any year of the contract, such contractor shall provide the state or such political subdivision of the state with any one of the following:

(A) Documentation in the form of a company or corporate policy adopted by resolution of the board of directors, shareholders, managers, members or other governing body of such contractor [to support] that complies with the nondiscrimination agreement and warranty under subdivision (1) of [this] subsection (a) of this section;

(B) Documentation in the form of a company or corporate policy adopted by a prior resolution of the board of directors, shareholders, managers, members or other governing body of such contractor if (i) the prior resolution is certified by a duly authorized corporate officer of such contractor to be in effect on the date the documentation is submitted, and (ii) the head of the agency of the state or such political subdivision, or a designee, certifies that the prior resolution complies with the nondiscrimination agreement and warranty under subdivision (1) of subsection (a) of this section, or

(C) Documentation in the form of an affidavit signed under penalty of false statement by a chief executive officer, president, chairperson or other corporate officer duly authorized to adopt company or corporate policy that certifies that the company or corporate policy of the contractor complies with the nondiscrimination agreement and warranty under subdivision (1) of subsection (a) of this section and is

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in effect on the date the affidavit is signed.

(d) For the purposes of this section, "contract" includes any extension or modification of the contract, [and] "contractor" includes any successors or assigns of the contractor, "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced, and "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders. For the purposes of this section, "contract" does not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, (2) a quasi-public agency, as defined in section 1-120, (3) any other state, as defined in section 1-267, (4) the federal government, (5) a foreign government, or (6) an agency of a subdivision, agency, state or government described in subparagraph (1), (2), (3), (4) or (5) of this subsection.

[[b]] (e) For the purposes of this section, "minority business enterprise" means any small contractor or supplier of materials fifty-one per cent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) Who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of section 32-9n; and "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations. "Good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements.

[[c]] (f) Determination of the contractor's good faith efforts shall

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include but shall not be limited to the following factors: The contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

[(d)] (g) The contractor shall develop and maintain adequate documentation, in a manner prescribed by the commission, of its good faith efforts.

[(e)] (h) The contractor shall include the provisions of [subsection] subsections (a) and (b) of this section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the state and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the commission. The contractor shall take such action with respect to any such subcontract or purchase order as the commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with section 46a-56; provided, if such contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the commission, the contractor may request the state of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the state and the state may so enter.

Sec. 2. Section 4a-60a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) Every contract to which the state or any political subdivision of the state other than a municipality is a party shall contain the following provisions:

(1) The contractor agrees and warrants that in the performance of

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the contract such contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or of the state of Connecticut, and that employees are treated when employed without regard to their sexual orientation;

(2) [the] The contractor agrees to provide each labor union or representative of workers with which such contractor has a collective bargaining agreement or other contract or understanding and each vendor with which such contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment;

(3) [the] The contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said commission pursuant to section 46a-56; and

(4) [the] The contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the contractor which relate to the provisions of this section and section 46a-56.

(b) (1) Prior to entering into [the] a contract valued at less than fifty thousand dollars for each year of the contract, the contractor shall provide the state or such political subdivision of the state with [documentation] a written representation that complies with the nondiscrimination agreement and warranty under subdivision (1) of subsection (a) of this section.

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(2) Prior to entering into a contract valued at fifty thousand dollars or more for any year of the contract, such contractor shall provide the state or such political subdivision of the state with any of the following:

(A) Documentation in the form of a company or corporate policy adopted by resolution of the board of directors, shareholders, managers, members or other governing body of such contractor [to support] that complies with the nondiscrimination agreement and warranty under subdivision (1) of [this] subsection (a) of this section;

(B) Documentation in the form of a company or corporate policy adopted by a prior resolution of the board of directors, shareholders, managers, members or other governing body of such contractor if (i) the prior resolution is certified by a duly authorized corporate officer of such contractor to be in effect on the date the documentation is submitted, and (ii) the head of the agency of the state or such political subdivision, or a designee, certifies that the prior resolution complies with the nondiscrimination agreement and warranty under subdivision (1) of subsection (a) of this section, or

(C) Documentation in the form of an affidavit signed under penalty of false statement by a chief executive officer, president, chairperson or other corporate officer duly authorized to adopt company or corporate policy that certifies that the company or corporate policy of the contractor complies with the nondiscrimination agreement and warranty under subdivision (1) of subsection (a) of this section and is in effect on the date the affidavit is signed.

(3) For the purposes of this section, "contract" includes any extension or modification of the contract, and "contractor" includes any successors or assigns of the contractor. For the purposes of this section, "contract" does not include a contract where each contractor is (A) a political subdivision of the state, including, but not limited to, a

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municipality, (B) a quasi-public agency, as defined in section 1-120, (C) any other state, as defined in section 1-267, (D) the federal government, (E) a foreign government, or (F) an agency of a subdivision, agency, state or government described in subparagraph (A), (B), (C), (D) or (E) of this subdivision.

[(b)] (c) The contractor shall include the provisions of subsection (a) of this section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the state and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the commission. The contractor shall take such action with respect to any such subcontract or purchase order as the commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with section 46a-56; provided, if such contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the commission, the contractor may request the state of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the state and the state may so enter.

Sec. 3. Subsection (a) of section 4a-60g of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

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

(1) "Small contractor" means any contractor, subcontractor, manufacturer or service company (A) that has been doing business under the same ownership or management and has maintained its principal place of business in the state, for a period of at least one year immediately prior to the date of application for certification under this section, (B) that had gross revenues not exceeding fifteen million

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dollars in the most recently completed fiscal year prior to such application, and (C) at least fifty-one per cent of the ownership of which is held by a person or persons who exercise operational authority over the daily affairs of the business and have the power to direct the management and policies and receive the beneficial interests of the business, except that a nonprofit corporation shall be construed to be a small contractor if such nonprofit corporation meets the requirements of subparagraphs (A) and (B) of this subdivision.

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

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

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

(5) "Control" means the power to direct or cause the direction of the management and policies of any person, whether through the ownership of voting securities, by contract or through any other direct

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or indirect means. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, twenty per cent or more of any voting securities of another person.

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

(7) "Individual with a disability" means an individual (A) having a physical or mental impairment that substantially limits one or more of the major life activities of the individual, which mental impairment may include, but is not limited to, having one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or (B) having a record of such an impairment.

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

Approved June 30, 2009