



General Assembly

February Session, 2010

Raised Bill No. 347

LCO No. 1671

01671_____VA_

Referred to Committee on Select Committee on Veterans' Affairs

Introduced by:
(VA)

AN ACT CONCERNING A SET-ASIDE PROGRAM FOR VETERAN-OWNED SMALL BUSINESSES.

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

1 Section 1. Section 4a-60g of the 2010 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective July 1, 2010*):

4 (a) As used in this section and sections 4a-60h to 4a-60j, inclusive, as
5 amended by this act, 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. "Small
20 contractor" does not include a certified or precertified veteran-owned
21 small business.

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 (a) of section 32-9, or are
37 individuals with a disability. "Minority business enterprise" does not
38 include a certified or precertified veteran-owned small business.

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

42 (5) "Control" means the power to direct or cause the direction of the
43 management and policies of any person, whether through the
44 ownership of voting securities, by contract or through any other direct
45 or indirect means. Control shall be presumed to exist if any person,
46 directly or indirectly, owns, controls, holds with the power to vote, or
47 holds proxies representing, twenty per cent or more of any voting

48 securities of another person.

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

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

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

62 (9) "Veteran" has the same meaning as provided in subsection (a) of
63 section 27-103.

64 (10) "Veteran-owned small business" means any contractor,
65 subcontractor, manufacturer or service company (A) that has been
66 doing business under the same ownership and management and has
67 maintained its principal place of business in the state for a period of at
68 least one year immediately prior to the date of application for
69 certification under this section, (B) that had gross revenues not
70 exceeding fifteen million dollars in the most recently completed fiscal
71 year prior to such application, and (C) at least fifty-one per cent of the
72 ownership of which is held by a veteran or veterans who exercise
73 operational authority over the daily affairs of the business and have
74 the power to direct the management and policies and receive the
75 beneficial interests of the business.

76 (b) (1) It is found and determined that there is a serious need to help
77 small contractors, minority business enterprises, nonprofit

78 organizations, [and] individuals with disabilities and veteran-owned
79 small businesses to be considered for and awarded state contracts for
80 the construction, reconstruction or rehabilitation of public buildings,
81 the construction and maintenance of highways and the purchase of
82 goods and services. Accordingly, the necessity, in the public interest
83 and for the public benefit and good, of the provisions of this section,
84 sections 4a-60h to 4a-60j, inclusive, as amended by this act, and
85 sections 32-9i to 32-9p, inclusive, is declared as a matter of legislative
86 determination.

87 (2) Notwithstanding any [provisions] provision of the general
88 statutes [to the contrary,] and except as set forth [herein] in this
89 section, the head of each state agency and each political subdivision of
90 the state other than a municipality shall set aside in each fiscal year, for
91 award to small contractors, on the basis of competitive bidding
92 procedures, contracts or portions of contracts for the construction,
93 reconstruction or rehabilitation of public buildings, the construction
94 and maintenance of highways and the purchase of goods and services.
95 Eligibility of nonprofit corporations under the provisions of this
96 section shall be limited to predevelopment contracts awarded by the
97 Commissioner of Economic and Community Development for housing
98 projects. The total value of such contracts or portions thereof to be set
99 aside by each such agency shall be at least twenty-five per cent of the
100 total value of all contracts let by the head of such agency in each fiscal
101 year, provided [that] neither: [(1)] (A) A contract that may not be set
102 aside due to a conflict with a federal law or regulation; [or (2)] nor (B) a
103 contract for any goods or services which have been determined by the
104 Commissioner of Administrative Services to be not customarily
105 available from or supplied by small contractors shall be included.
106 Contracts or portions thereof having a value of not less than
107 twenty-five per cent of the total value of all contracts or portions
108 thereof to be set aside shall be reserved for awards to minority
109 business enterprises.

110 (3) Notwithstanding any provision of the general statutes and

111 except as set forth in this section, the head of each state agency and
112 each political subdivision of the state other than a municipality shall
113 set aside in each fiscal year, for award to veteran-owned small
114 businesses, on the basis of competitive bidding procedures, contracts
115 or portions of contracts for the construction, reconstruction or
116 rehabilitation of public buildings, the construction and maintenance of
117 highways, and the purchase of goods and services. The total value of
118 such contracts or portions thereof to be set aside by each such agency
119 shall be at least three per cent of the total value of all contracts let by
120 the head of such agency in each fiscal year, provided a contract that
121 may not be set aside due to a conflict with a federal law or regulation
122 shall not be included in such calculation, except that the head of any
123 such agency may set aside an amount based on the amount of all
124 contracts not excluded from the calculation which are anticipated to be
125 let in any fiscal year if the method of calculation for such year would
126 result in a maximum value of contracts to be set aside of less than three
127 per cent of the contracts anticipated to be let in such year or in a
128 minimum value of contracts to be set aside of greater than three per
129 cent of the contracts anticipated to be let in such year.

130 (c) The head of any state agency or political subdivision of the state
131 other than a municipality may, in lieu of setting aside any contract or
132 portions thereof, require any general or trade contractor or any other
133 entity authorized by such agency to award contracts [,] to set aside a
134 portion of any contract for subcontractors who are eligible for set-aside
135 contracts under this section. Nothing in this subsection shall be
136 construed to diminish the total value of contracts which are required to
137 be set aside by any state agency or political subdivision of the state
138 other than a municipality pursuant to this section.

139 (d) The [heads of all state agencies] head of each state agency and of
140 each political subdivision of the state other than a municipality shall
141 notify the Commissioner of Administrative Services of all contracts to
142 be set aside pursuant to subsection (b) or (c) of this section at the time
143 that bid documents for such contracts are made available to potential

144 contractors.

145 (e) The awarding authority shall require that a contractor or
146 subcontractor awarded a contract or a portion of a contract under this
147 section perform not less than fifteen per cent of the work with the
148 workforces of such contractor or subcontractor and shall require that
149 not less than twenty-five per cent of the work be performed by
150 contractors or subcontractors eligible for awards under this section. A
151 contractor awarded a contract or a portion of a contract under this
152 section shall not subcontract with any person with whom the
153 contractor is affiliated. No person who is affiliated with another person
154 shall be eligible for awards under this section if both affiliated persons
155 considered together would not qualify as a small contractor, [or a]
156 minority business enterprise or a veteran-owned small business under
157 subsection (a) of this section. The awarding authority shall require that
158 a contractor awarded a contract pursuant to this section submit, in
159 writing, an explanation of any subcontract to such contract that is
160 entered into with any person that is not eligible for the award of a
161 contract pursuant to this section, prior to the performance of any work
162 pursuant to such subcontract.

163 (f) The awarding authority may require that a contractor or
164 subcontractor awarded a contract or a portion of a contract under this
165 section furnish the following documentation: (1) A copy of the
166 certificate of incorporation, certificate of limited partnership,
167 partnership agreement or other organizational documents of the
168 contractor or subcontractor; (2) a copy of federal income tax returns
169 filed by the contractor or subcontractor for the previous year; and (3)
170 evidence of payment of fair market value for the purchase or lease by
171 the contractor or subcontractor of property or equipment from another
172 contractor who is not eligible for set-aside contracts under this section.

173 (g) The awarding authority or the Commissioner of Administrative
174 Services or the Commission on Human Rights and Opportunities may
175 conduct an audit of the financial, corporate and business records and

176 conduct an investigation of any small contractor, [or] minority
177 business enterprise or veteran-owned small business which applies for
178 or is awarded a set-aside contract for the purpose of determining
179 eligibility for awards or compliance with the requirements established
180 under this section.

181 (h) The provisions of this section shall not apply to any state agency
182 or political subdivision of the state other than a municipality for which
183 the total value of all contracts or portions of contracts of the types
184 enumerated in subsection (b) of this section is anticipated to be equal
185 to ten thousand dollars or less.

186 (i) In lieu of a performance, bid, labor and materials or other
187 required bond, a contractor or subcontractor awarded a contract under
188 this section may provide to the awarding authority, and the awarding
189 authority shall accept a letter of credit. Any such letter of credit shall
190 be in an amount equal to ten per cent of the contract for any contract
191 that is less than one hundred thousand dollars and in an amount equal
192 to twenty-five per cent of the contract for any contract that exceeds one
193 hundred thousand dollars.

194 (j) (1) Whenever the awarding authority has reason to believe that
195 any contractor or subcontractor awarded a set-aside contract has
196 wilfully violated any provision of this section, the awarding authority
197 shall send a notice to such contractor or subcontractor by certified
198 mail, return receipt requested. Such notice shall include: (A) A
199 reference to the provision alleged to be violated; (B) a short and plain
200 statement of the matter asserted; (C) the maximum civil penalty that
201 may be imposed for such violation; and (D) the time and place for [the]
202 a hearing on the violation asserted. Such hearing shall be fixed for a
203 date not earlier than fourteen days after the notice is mailed. The
204 awarding authority shall send a copy of such notice to the Commission
205 on Human Rights and Opportunities.

206 (2) The awarding authority shall hold a hearing on the violation
207 asserted unless such contractor or subcontractor fails to appear. The

208 hearing shall be held in accordance with the provisions of chapter 54.
209 If, after the hearing, the awarding authority finds that the contractor or
210 subcontractor has wilfully violated any provision of this section, the
211 awarding authority shall suspend all set-aside contract payments to
212 the contractor or subcontractor and may, in its discretion, order that a
213 civil penalty not exceeding ten thousand dollars per violation be
214 imposed on the contractor or subcontractor. If such contractor or
215 subcontractor fails to appear for the hearing, the awarding authority
216 may, as the facts require, order that a civil penalty not exceeding ten
217 thousand dollars per violation be imposed on the contractor or
218 subcontractor. The awarding authority shall send a copy of any order
219 issued pursuant to this subsection by certified mail, return receipt
220 requested, to the contractor or subcontractor named in such order. The
221 awarding authority may cause proceedings to be instituted by the
222 Attorney General for the enforcement of any order imposing a civil
223 penalty issued under this subsection.

224 (k) On or before January 1, 2000, the Commissioner of
225 Administrative Services shall establish a process for certification of
226 small contractors and minority business enterprises as eligible for
227 set-aside contracts, and, on or before January 1, 2011, the commissioner
228 shall establish a process for certification of veteran-owned small
229 businesses as eligible for set-aside contracts. Each certification shall be
230 valid for a period not to exceed two years. Any paper application for
231 certification shall be no longer than six pages. The Department of
232 Administrative Services shall maintain on its web site an updated
233 directory of (1) small contractors and minority business enterprises
234 certified under this section, and (2) veteran-owned small businesses
235 certified under this section.

236 (l) On or before August 30, 2007, and annually thereafter, each state
237 agency and each political subdivision of the state other than a
238 municipality setting aside contracts or portions of contracts shall
239 prepare a report establishing small and minority business set-aside
240 program goals for the twelve-month period beginning July first in the

241 same year, and, on or before August 1, 2011, each such agency and
242 political subdivision shall prepare a report establishing veteran-owned
243 small business set-aside program goals for the twelve-month period
244 beginning July first in the same year. Each such report shall be
245 submitted to the Commissioner of Administrative Services, the
246 Commission on Human Rights and Opportunities and the
247 cochairpersons and ranking members of the joint standing committees
248 of the General Assembly having cognizance of matters relating to
249 planning and development and government administration and
250 elections.

251 (m) On or before November 1, 1995, and quarterly thereafter, each
252 state agency and each political subdivision of the state other than a
253 municipality setting aside contracts or portions of contracts shall
254 prepare a status report on the implementation and results of its small
255 business and minority business enterprise set-aside program goals
256 during the three-month period ending one month before the due date
257 for the report. On or before November 1, 2011, and quarterly
258 thereafter, each state agency and each political subdivision of the state,
259 other than a municipality, setting aside contracts or portions of
260 contracts shall prepare a status report on the implementation and
261 results of its veteran-owned small business set-aside program goals
262 during the three-month period ending one month before the due date
263 for the report. Each report shall be submitted to the Commissioner of
264 Administrative Services and the Commission on Human Rights and
265 Opportunities. Any state agency or political subdivision of the state,
266 other than a municipality, that achieves less than fifty per cent of its
267 small contractor and minority business enterprise set-aside program
268 goals by the end of the second reporting period in any twelve-month
269 period beginning on July first shall provide a written explanation to
270 the Commissioner of Administrative Services and the Commission on
271 Human Rights and Opportunities detailing how the agency or political
272 subdivision will achieve its goals in the final reporting period. The
273 Commission on Human Rights and Opportunities shall: (1) Monitor
274 the achievement of the annual goals established by each state agency

275 and political subdivision of the state other than a municipality; and (2)
276 prepare a quarterly report concerning such goal achievement. The
277 report shall be submitted to each state agency that submitted a report,
278 the Commissioner of Economic and Community Development, the
279 Commissioner of Administrative Services and the cochairpersons and
280 ranking members of the joint standing committees of the General
281 Assembly having cognizance of matters relating to planning and
282 development and government administration and elections. Failure by
283 any state agency or political subdivision of the state other than a
284 municipality to submit any reports required by this section shall be a
285 violation of section 46a-77.

286 (n) (1) On or before January 1, 2000, and annually thereafter, the
287 Department of Administrative Services shall establish a precertification
288 list of small contractors and minority business enterprises who have
289 established a principal place of business in the state but have not
290 maintained such place of business for one year and are not in the
291 directory prepared pursuant to subsection (k) of this section. An
292 awarding agency may select a small contractor or minority business
293 enterprise from such precertification list only after such awarding
294 agency makes a good faith effort to find an eligible small contractor or
295 minority business enterprise in the directory and determines that no
296 small contractor or minority business enterprise is qualified to perform
297 the work required under the contract.

298 (2) On or before January 1, 2011, and annually thereafter, the
299 Department of Administrative Services shall establish a precertification
300 list of veteran-owned small businesses who have established a
301 principal place of business in the state, but have not maintained such
302 place of business for one year and are not in the directory prepared
303 pursuant to subsection (k) of this section. An awarding agency may
304 select a veteran-owned small business from such precertification list
305 only after such awarding agency makes a good faith effort to find an
306 eligible veteran-owned small business in the directory and determines
307 that no veteran-owned small business is qualified to perform the work

308 required under the contract.

309 (o) Nothing in this section shall be construed to apply to the four
310 janitorial contracts awarded pursuant to subsections (b) to (e),
311 inclusive, of section 4a-82.

312 Sec. 2. Subsection (a) of section 4a-57 of the 2010 supplement to the
313 general statutes is repealed and the following is substituted in lieu
314 thereof (*Effective July 1, 2010*):

315 (a) All purchases of, and contracts for, supplies, materials,
316 equipment and contractual services, except purchases and contracts
317 made pursuant to the provisions of subsection (b) of this section and
318 public utility services as provided in subsection (e) of this section shall
319 be based, when possible, on competitive bids or competitive
320 negotiation. The commissioner shall solicit competitive bids or
321 proposals by providing notice of the planned purchase in a form and
322 manner that the commissioner determines will maximize public
323 participation in the competitive bidding or competitive negotiation
324 process, including participation by small contractors and veteran-
325 owned small businesses, as defined in section 4a-60g, as amended by
326 this act, and promote competition. In the case of an expenditure that is
327 estimated to exceed fifty thousand dollars, such notice shall be posted,
328 not less than five calendar days before the final date of submitting bids
329 or proposals, on the State Contracting Portal. Each notice of a planned
330 purchase under this subsection shall indicate the type of goods and
331 services to be purchased and the estimated value of the contract
332 award. The notice shall also contain a notice of state contract
333 requirements concerning nondiscrimination and affirmative action
334 pursuant to section 4a-60 and, when applicable, requirements
335 concerning the awarding of contracts to small contractors, minority
336 business enterprises, individuals with a disability, [and] nonprofit
337 corporations and veteran-owned small businesses pursuant to section
338 4a-60g, as amended by this act. Each bid and proposal shall be kept
339 sealed or secured until opened publicly at the time stated in the notice

340 soliciting such bid or proposal.

341 Sec. 3. Subsections (b) and (c) of section 4a-60h of the general
342 statutes are repealed and the following is substituted in lieu thereof
343 (*Effective July 1, 2010*):

344 (b) The commissioner shall adopt regulations in accordance with
345 [the provisions of] chapter 54 to carry out the purposes of sections 4a-
346 60g to 4a-60j, inclusive, as amended by this act. Such regulations shall
347 include (1) provisions concerning the application of the program to
348 individuals with a disability and veterans; (2) guidelines for a legally
349 acceptable format for, and content of, letters of credit authorized under
350 subsection (j) of section 4a-60g, as amended by this act; (3) procedures
351 for random site visits to the place of business of an applicant for
352 certification at the time of application and at subsequent times, as
353 necessary, to ensure the integrity of the application process; and (4)
354 time limits for approval or disapproval of applications.

355 (c) On or before January 1, 1994, the Commissioner of
356 Administrative Services shall, by regulations adopted in accordance
357 with chapter 54, establish a process to ensure that small contractors,
358 small businesses and minority business enterprises have fair access to
359 all competitive contracts outside of the set-aside program. On or before
360 January 1, 2011, the commissioner shall, by regulations adopted in
361 accordance with chapter 54, establish a process to ensure that veteran-
362 owned small businesses have fair access to all competitive contracts
363 outside of the set-aside program.

364 Sec. 4. Section 4a-60j of the general statutes is repealed and the
365 following is substituted in lieu thereof (*Effective July 1, 2010*):

366 A small contractor or veteran-owned small business shall receive
367 payment on a contract awarded to him or her under the provisions of
368 sections 4a-60g to 4a-60i, inclusive, as amended by this act, no later
369 than thirty days from the due date of any such payment on such
370 contract.

371 Sec. 5. Section 4a-61 of the general statutes is repealed and the
372 following is substituted in lieu thereof (*Effective July 1, 2010*):

373 (a) The Commissioner of Administrative Services, with the advice of
374 the Commissioner of Economic and Community Development, shall
375 adopt regulations, in accordance with chapter 54, establishing
376 procedures for the award of contracts concerning minority business
377 enterprises by the state or any political subdivision of the state other
378 than a municipality.

379 (b) The Commissioner of Administrative Services, with the advice of
380 the Commissioner of Economic and Community Development, shall
381 adopt regulations, in accordance with chapter 54, establishing
382 procedures for the award of contracts concerning veteran-owned small
383 businesses by the state or any political subdivision of the state other
384 than a municipality.

385 Sec. 6. Section 4a-62 of the general statutes is repealed and the
386 following is substituted in lieu thereof (*Effective July 1, 2010*):

387 (a) (1) There is established a Minority Business Enterprise Review
388 Committee. The committee shall consist of two members of the House
389 of Representatives appointed by the speaker of the House, two
390 members of the House appointed by the minority leader of the House,
391 two members of the Senate appointed by the president pro tempore of
392 the Senate, and two members of the Senate appointed by the minority
393 leader of the Senate. The committee shall conduct an ongoing study of
394 contract awards, loans and bonds made or guaranteed by the state or
395 any political subdivision of the state other than a municipality for the
396 purpose of determining the extent of compliance with the provisions
397 of the general statutes concerning contract awards, loans and bonds for
398 minority business enterprises, including the set-aside program for such
399 business enterprises.

400 [(b)] (2) The committee may request any agency of the state
401 authorized to award public works contracts or to enter into purchase

402 of goods or services contracts to submit such information on
403 compliance with sections 4a-60 and 4a-60g, as amended by this act,
404 and at such times as the committee may require. The committee shall
405 consult with the Departments of Public Works, Transportation and
406 Economic Development and the Commission on Human Rights and
407 Opportunities concerning compliance with the state programs for
408 minority business enterprises. The committee shall report annually on
409 or before February first to the Joint [Standing] Committee on
410 Legislative Management on the results of its ongoing study and
411 include its recommendations, if any, for legislation.

412 (b) (1) There is established a Veteran-Owned Small Business Review
413 Committee. The committee shall consist of two members of the House
414 of Representatives, appointed by the speaker of the House of
415 Representatives; two members of the House of Representatives,
416 appointed by the minority leader of the House of Representatives; two
417 members of the Senate, appointed by the president pro tempore of the
418 Senate and two members of the Senate, appointed by the minority
419 leader of the Senate. The committee shall conduct an ongoing study of
420 contract awards by the state or any political subdivision of the state,
421 other than a municipality, for the purpose of determining the extent of
422 compliance with the state set-aside program established under section
423 4a-60g, as amended by this act, concerning contract awards for
424 veteran-owned small businesses.

425 (2) The committee may request any agency of the state authorized to
426 award public works contracts or to enter into purchase of goods or
427 services contracts to submit such information in compliance with
428 section 4a-60g, as amended by this act, and at such times as the
429 committee may require. The committee shall consult with the
430 Department of Administrative Services concerning compliance with
431 the state set-aside program with respect to veteran-owned small
432 businesses. The committee shall report annually on or before February
433 first to the Joint Committee on Legislative Management on the results
434 of its ongoing study and include its recommendations, if any, for

435 legislation.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2010</i>	4a-60g
Sec. 2	<i>July 1, 2010</i>	4a-57(a)
Sec. 3	<i>July 1, 2010</i>	4a-60h(b) and (c)
Sec. 4	<i>July 1, 2010</i>	4a-60j
Sec. 5	<i>July 1, 2010</i>	4a-61
Sec. 6	<i>July 1, 2010</i>	4a-62

Statement of Purpose:

To establish a set-aside program for veteran-owned small businesses.

[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.]